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DEFENSIO LEGIS:

OR,

The Whole STATE OF ENGLAND

Inquisited and Defended FOR General Satisfaction.

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Defenſio Legis.

Section I.

Paragraph 1.

The occaſion of this Diſcourſe.

I Could willingly have ſtill ſhaded my ſelf within the Bower of ſilence: Being no apt Diſputant for a weighty Cauſe. But ſeeing this dangerous Weed, *Sedition*, unthankful and peryerſe: bloom ſaucily unconform'd.

I could not reſtrain from giving the world ſome Glimmerings of this *Glittering Saint*: ſhrowding a *devout Fraud* under the *Crimſon Mantle of the Spirit*: ſome filthy Fiend crept in at the back door; enraging Vulgars to ſcoff at Law, and taunt at Majeſty: And if the Tree be known by the Fruit, this Ghoſt without *Galilæo's* Glaſs, to pry into the Giſard: may prove an apparent Impoſtor, or whiffling Cheat;

leaven'd with a greater Doſe of the Conſpirator, than Phanatick; when Deſigns are mellow, to foal Rebellion.

Par. 2.

A good Spirit is tractable to Law.

A Righteous ſpirit ſent from Heaven is *pliant, and paſſive, ſubmiſſive to Thrones*: and for favours kiſſes the hand, with an humble and proſtrate knee: But this *ugly Bold face*, this *Carrion Hagg*, through cockering is become moſt haughty, and rages Aloft, ſtark Rude, up in the Boughs, and over Rampant, even vapouring and kicking at Authority.

When *Sedition* grows mutinous and hairy, gibing at Law, and frumping Magiſtracy; *near fledg'd to flie into Empires face:* 'Tis high time for Governours to look about them, leſt the State be over-much Diſquieted and Diſtempered by too long forbearings.

I ſhall not be Blithe with the *Amuſed*, the poor *miſlead Wanderers*: only bluſh ſome *ſhameleſs Deluders*, that will take no warning, but like reſty *Bulls of Baſhan*, over hedge and ditch, that no Eccleſiaſtical Canon, nor Secular Fence can hold them.

Par.

Par. 3.

The moſt Proſperous ever moaning.

WHen I travel the *Region of Frailty*, viewing the many ſlidings that attend humane nature, I find none ſo *Doltiſh and Inexcuſable as the Pantings of the moſt Happy*, to whine and pretend Infelicity: like Crocodiles that blubber much, when moſt Deſigning to devour. The Boorishneſs of others, now their heads are well faſtned to their ſhoulders; to flurt and abuſe Clemency, I much lament: after the *Gratitude of Harpies*, to repay Favours with Fury; at the long run to deſtroy themſelves.

Such is the unhappineſs of ſome *unquiet* and *peeviſh Moaners*; glutted with the *Dowries* of *Heaven*, *Freedom*, *Peace and Plenty*: bleſſings which doth not only diſoblige our *Eccleſiaſtick Amuſers*, the *Chatterers againſt Monarchy*, but even diſtract them: being ſadly unthankful and pettiſhly Blinded, without veneration for either. And without a ſtraight hand, the Fretful, *the Sucklings of Sedition*, will rabble on in this teſty heat againſt the State, and ſtand in little awe of an *Ordinance Royal*.

Par. 4.

Their Exceptions meer ſandy Cavils not worth Anſwering.

THeir rombling Schiſm hath been ſhamefully refuted by their own Tribe, 'tis bootleſs for me to undertake ſuch *Hobby-horſe whimbles*; the Croſs in Baptiſm a Popiſh remain: the Surplice and Hood dangerous Mormo's and Limbs of the Beaſt; Congying towards the Eaſt, Cringes learnt from *Rome*; the *ſcrapes of Antichriſt*. Pretty flim-flams, more impertinent and Camelion, than querying why *Graſs is green*, or *Blood red*: no brand-new Brawls, but the muſty Relicks of our doughty Brablers: the old Diſobedients, which by the abetments of Liberty and Malice, bud afreſh, to the fretting of Religion.

Par. 5.

Recedings from Law are Retraits from Reaſon.

I'M griev'd for wincing Scorners, the *Kickers againſt Authority*; with what Frothineſs and Fury ſome ſome to Rent and Rip all aſunder; to Patch and Botch what

what is ſo modiſhly ſuited and exactly fitted; to hurry the Church *in ſenſum Reprobum*, or deſperate Eſtate, as the 35 *E.* 1. adjudges it.

But why this Elopement, or cauſleſs Revolt from the Mother Church? for our good Redoubbors or holy Patchers well know without a *Bath-koll*, or an Ecco from Heaven, that what is now ſetled, is by *Act of State*, *no Canon of the Church*; *no introductive new Law*, *an Explanatory* Reviver *only of the Old.*

Par. 6.

The cauſe of this Diſtractiveneſs.

CErtainly this crump and ſcurvy Temper ſprings from the *Tickley Tree*: wholly crook'd through over-much Fondneſs, in liſtning to the night Crow: with an unmanly eaſineſs, in obeying her Croaks, as Head; whom nature order'd though not as Neiſe or Heel, at beſt but as Heart, to aſſociate in Amity: and not to domineer as ſole Commandreſs. And though their Lips are not ſeal'd up, God ordain'd their Tongues to be ſilent: And not to be at Rovers, *to goſſop beyond the Milk-pale, or Dreſſer-board.*

This titling Bed-parot, muſt on ne-

ceſſity (there's no diſputing with Fire and Brimſtone) reign as Abſolute as the *Mogul*, and be Miſtreſs Controuleresſ: otherwiſe the houſe muſt ring of Brawlings; and after a Tempeſt, a Shower may happen. If Cow-ſpirited in lacking the common Lerry of Thunder and Lightning, or the art of Chiding and Brabling: then the Mumps and Sullens, muſt be the *Henbane Rally*, to ſet the man beſide Himſelf, to buckle to her Zeal.

Doleful Doctrine, that the ſubject, ordain'd to rock Cradles, and ſlop between the Kitchin and the Dairy, ſhould be lectur'd; to dare not only punch the Governour, but contrary to nature, to prowl and pout even for the Scepter: For *Man by Precepts from Heaven*, and *Commands of Nature, is Sovereign: and the Female by both ſubjected to his very will, and born to obey.*

Domineerings per force are morally Eſſoinable.

This pratling Nightingale, is in part excuſable, and may come off without a white ſheet: for ſhee's not only ſermon'd, and privily buzz'd in the ear; but conjur'd, indeed over-haunted, even worried out of her wits, under Threats of future Fire,

by

by our *Church-Ravens*, to promote *the bonny Old Cauſe*, with Curtain Lectures. And if Paſſion may not rule the roaſt. or ſhe wear the Breeches, for the Confeſſor to pick out the Pictures: then to turn *Rantreſs, ſcold Reaſon off the Perch*, and *hawk with her own Spaniels.*

No Miniſtreſs of State unleſs juſtly Entituled.

Out of Tenderneſs to the Sex, and for ſeveral other cauſes, the Law doth wave the *feebler Veſſel* in all publick Employments: being never ſo much as call'd or ſworn to the Law, only entruſted with the care of the Family, which is no *Niefty or home Drudgery*, nor the Italian or Spaniſh Mew, but Promotion and Favour: for ſhe's left as domeſtick Princeſs, with the power of *Cover and Key*, to rule within doors; which is the female calling, the main end of their Creation: *Houſe-matters the Spit and the Boiler, being too womaniſh and Abaſing, beneath the Dignity of Man, to cumber himſelf with.*

But in caſe Authority, or inheritable Honour be annex'd to the Blood and Progeny: as the Crown, or other deſcendable Dignity; then for the regard to the right the *Salick Law* takes no place: the Sex

Sex is not diſtinguiſhable, *Preſuming they'l never adventure Abroad, to tranſact publick Concerns, unleſs uſher'd by virile Gravity.*

The Factious Female commonly a Tyraneſs.

For quietneſs ſake the ſoft-pated are uſually *Hen-peckt*, and overcome with night Twattles, and quite mump'd of their manlineſs: they tell us they'r enforc'd to ſit down by this blockiſhneſs, or to be tired out of their lives with ſcolding and pouting, and the houſe quickly too hot to hold them.

Par. 7.

The reaſon of this plainneſs.

THE opening this window, with haſty Readers may be thought too great an Airineſs, unbecoming the Gravity of a politick Arguer, indeed the *modeſty of an adviſed Pen*, fitter for light-pated Pantalooners, quiblers, or quaffers.

For Proſelytiſm not Table-talk.

I call God to witneſs I write not floutingly, out of a frumpiſh humour, to raiſe Paſ-

Paſſion in ſome, or Pleaſantneſs in others: but ſeriouſly, *in obedience to truth*, to unſeduce the poor enſlaved ſouls: in ſhewing the fraud and weakneſs of their Teachers; on what ſlender and fallacious Wyres their Doctrine hangs: to the Hazzard of their higheſt Welfare, if not timely Prevented, by broken Hearts and a full Reverſion to the Church of *England*.

Neither Wanton nor Rancorous.

This may ſuffice for my *ſmoothneſs of heart*, in ſpeaking thus plainly; for 'tis well known, their cauſe not being ſo currant, to endure the open Light; they're fain to diſpence with *ſmall creepings*: And glad to take into their aſſiſtance, the *ſhe-ſtickler*.

SECT.

SECT. II.

Par. 8.

Prelacy a graceful Prop or Column to Nobleſs.

WHen I conſider the uſe and Gracefulneſs of Learning, with the neceſſity of the Prieſthood, or we might degenerate into Brutiſm: I greatly admire *Coranto*; or by what colour of Law or Prudence any well-bred perſon, eſpecially the *Tribe of Honour*, ſhould diſcover a routiſh ſpirit in roving from Prelacy: *to uncrown the King and unnoble themſelves.*

That which correſponds beſt with Monarchy muſt needs garniſh and ſtrengthen their order: It checks the ſaucineſs of the *Peyones*, thoſe *boggy flouters, or fronts of Impudence*; and thereby offers Incenſe to Honour. For ſhould the Church be reduc'd to that Beggery and Meanneſs: to quiet the rage of ſome *pudling Elopers, the grumblers againſt Prelacy*, Monarchy would ſoon be darken'd, *the eyes of the Church* being put out, and Nobility muſt then on courſe be totally eclipſed: If the ſubſtance

ſtance fail, the ſhadow muſt vaniſh. *Majeſty being the Sun and Temple of Honour*, and that but the Reflex or Adjective of Sovereignty. *In nature the Accident will periſh, without the coherence of the Subject.*

Par. 9.

Scoffings are uſually retalliated.

AS ſome in their *grim Taunts* have err'd too deeply againſt the very Intereſt of Learning: and muſt reſpond one day for their Treachery unbecoming Schollars: I fear others having ſinn'd againſt the Rules, and very *Inſtinct of Honour*, may ſuffer for their frowardneſs, beneath Gentlemen, in their ſharp Eſſays, and quipping Brawls, to crucifie the Church; *the ſojourner of the ſoul, and Buttreſs of their own quality.*

Caution to the Worthy.

In a word, let the well-born take Prudence by the hand, and counſel with the concerns of Greatneſs: And they ſhall find 'tis *Debitum Honoris*, a Law and Duty levant on generous Blood, to have a care of Monarchy, the ſoul of Honour: in that they muſt leave nipping the Church,

Church, *the comely Auxiliary to the Crown.*

Par. 10.

Calviniſm calculated only for Commonwealths.

The cry'd up Diſcipline well becomes *Geneva* or *Amſterdam*; popular States: where the Muſes live under Hatches, with Winter uſage. And mudling Bartery, *Hogen Mogen*, capeering on the top of the wheel, bearing all the ſway: But for great *Britain*, *the Region of the Graces*, *and Climate of Dignity*; more congruous with ſome is the Regiment of *Rome*, and leſs bitter than to grone under a Mytre, in every Ham.

Prelates muſt abound in good Works.

I find by the Statute of *Carliſle*, that the end of Prelacy was not to be always Hammering in Pulpits, ſolely to grammar us in Grace: But for the *Conductors of the Soul*, to be hoſpital, dolers of Alms, and ſamplers of Piety: duties not feaſible without Temporals. But *to fortifie the Church in her Eſtate*, *ſmells of Papiſtry*; *to diſmantle her*, *and eject the Revenue*, *ſmacks of Zeal*, *and nods from Heaven.*

Par.

Par. 11.

Monarchs ought to be Maſters of both Tables.

No Prelate, no Prince, is a true Maxim of State, though much vilified and ſcoff'd at, by Anti-Kings and back-friends to Dignity: 'Tis as hard for Monarchy to live without its Image, or Repreſentative in the Church: as for humane Nature to breath without the Elements. *Sovereignty is a replete compacted Body, and Impartible,* if the Church interfere and claſh with the State, and ſtruggle for a joynt-partnerſhip, how can the Scepter continue its Prerogative, or the People their Priviledges?

In *Polyarchy* a parity in the Church may be tolerated; neither there ſafely, for the Temporal Sword muſt ſtrike to the Paſtoral Staff. How this will reliſh with ſome Anti-Romaniſts, that flaſh High, and ſcorn to ſtoop at ſmall game, let the Judicious determine.

Thus Prelacy, if the Intereſt of Monarchy be duly adjuſted, is *à ſine quo non*, ſo needful an aſſiſtant; without which Monarchy would ſoon be abridg'd and fetter'd, and the *firſt file of Subjects* tric'd

of

of their Peerage: a truth with the remoteſt allies to Honour, elemented but with a grain of Sobriety. In brief, *Opponents of Prelacy* are *Foes to Order*, on courſe *frigid Amigo's to Dignity*, the gradual ſcheme of order; in truth, as froſty to Sovereignty, being too near akin to *Polyarchs*; couſin-germans to *Anarchy*.

I write not thus warmly to claw; Adhiring none, though ſome are richly qualified, and adorn the conſulage. But barely in Defence of the Order, *the Catholick Cauſe of Gentlemen*; for ſhould the *ſupernal Power* but deal juſtly with us, in puniſhing our ungratefulneſs, for not uniting and lauding his mercies, and ſuffer Monarchy to be once more expelled: what then will ſoon become of Gentlemen, and all ſober perſons; the leaneſt pate that never ſchooled farther then *Puerilis* or the *Accidence* muſt needs be ſenſible.

Par. 12.

Virtue not courted but for the Golden Fleece.

WHat makes this odds, theſe *windy Tootings*, fighting with ſhadows? if a Prelate be any way peccant, let him be dethron'd and puniſhed: if the Curates be tardy, if dumb or vicious, let them

them be chaſtiz'd and Depriv'd: this muſt needs end the Quarrel, and make up the Breaches, in Charity and Peace: for the Function to ſuffer were horridly ſhameful, even beyond Barbariſm. *England* is a very cold clime for Virtue, were not the Genius ſweetned by Preferment; few would ſweat to crawl up ſo craggy a mountain, ſhould the Government then be *Anniented* or thrown off; nay, at all more clipt and embaſed, for no Crime or Booty imaginable, but purely to humour Churliſhneſs, and Avarice of Novelty: *Learning will ſoon decline, the Monarchy wither; all Gradations of Honour fall in Contempt and Deriſion.*

Let me Adventure to adviſe noble Perſons not to be entrap'd with the Syrens of Diviſion, whom they will find inwardly *Hocus-pocuſſes*, and Antipodes to Honour, haſty to inter the exiſtent Array of the Church, as the ſwifteſt medium, to intomb Nobility; thruſt out Religion, and introduce tyranny and blindneſs.

Par. 13.

A Pey-bald Government no good Faſhion for Princes.

A Sweet motley Ruling *Monarchy* in the State, and *Democracy* in the Church:

of their Peerage: a truth with the remoteſt allies to Honour, elemented but with a grain of Sobriety. In brief, *Opponents of Prelacy* are *Foes to Order*, on courſe *frigid Amigo's to Dignity*, the gradual ſcheme of order; in truth, as froſty to Sovereignty, being too near akin to *Polyarchs*; couſin-germans to *Anarchy*.

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A Sweet motley Ruling *Monarchy* in the State, and *Democracy* in the Church:

I wonder what Goblin doth prompt some to hearken to these infectious Charmers, *the Fatlings of Sedition*; when 'tis visible by late Practices, their weedy Positions are ugly Spiders, though wrapt in webs of Musk, crusted over with specious Disguises, and sented over strong (to catch the weak) with feigned Zeal: And *no Sorcery so out-ragious and hard to be expell'd, as the venome of Sedition.*

It had been a proper sentence for *Darius*'s Guard to have quered the strength of Sedition; but to have Bequeathed to Posterity the aculeate and apteſt Receit, to cure the Mockers againſt Majesty; lest from the Driping-pan we leap into the Fire: would have merited a Princely Advance indeed: even beyond the Honour of being *Darius*'s Cousin.

Par. 14.

Flagellets of Faction Pipings dangerous for Princes.

ILLUD *possumus quod securè possumus*: *that's to be done, which is*

is Conſiſtent with ſafety: is a Cordial of State: and Majeſty is not to be Decoy'd and Whiſtled aſleep, with *Flutes of Fraud*: for were Boutefeus, and fomenters of Broils gratified in their Demands, 'twould not quench the Flame: they would ſtill be Mining, never give over blowing the Cole, till they had blown up the Hierarchy, and ſo Dethron'd Monarchy. Which verifies the Maxim at Common Law: *Once Pravous, in Preſumption of Law, for ever ſo, in the ſame kind of Pravity.*

The *Vena Porta*, and maſter-vein of Monarchy is Juriſdiction Eccleſiaſtical: which the *Surrogates of Strife*, will as ſoon permit, as Fire to Cohabit with Water. And if the *Hooters againſt Prelacy*, hagg the ſoul; Inſtilling what Principles into the Laity they pleaſe: Sovereignty muſt ſoon fade, the Power of the Keys being in them to lock and unlock the holy Portal; or to Abſolve and Retain, as they liſt. *As is the Driver, ſo muſt be the Drove:*

for who dares Disobey *Sub pœnâ* of Trouble and Shame here, and hereafter lest the Key be turn'd against Him.

Therefore on necessity of State, *Ecclesiæ Interesse Regum Tutela*: the Tutelage of the Church must be Sovereign Care: to keep out the *Slighters of Discipline*, that would soon Devour both; if they once get but the Mastery of either.

Par. 15.

The Interest of England: *the Protestant.*

KIngs must die and States determine: but the *Interest of either, like the fair Diana and Mistris of the world, Truth; neither alters nor dies:* Now, *The Interest of the Sovereignty of* England *is the Protestant:* and the Elegant'st Regency, of that Church is Prelateship: that's the natural Element, to lead a quiet and divine life: any other way the gayest, will prove as uncouth and Hag-like to continue: As to stive up Fish without water, or *Socrates* withour Air.

In

In fine. *The Spiritual and Temporal Grandiſhip are wreathed in the Diadem, without either it will not be worth wearing.*

Par. 16.

The State marr'd in the maſhing of the Church.

PRelaticide Confounds not the Church alone, with Parity; but the State likewiſe with Ovelty, or brutiſh Equality: Contrary to Nature, which hath ordain'd, *a Preſidency and better Hand among all Created Excellencies*: which I gueſs no Peer, nor generous Perſon, can well Digeſt: to have every pedei Creeping Fellow, every dunghil Skip, Crow over Him: And become his Superiour and Chancellor, in Church Cenſures.

Lay-Eldering meer Lumber.

Such Traſh are their Lay-Elders, unfit to ſit with the Hines of their Flock: a

peerleſs Chancellorſhip, or modiſh Form; for blue Aprons, and every buffoon Pedeſtral, or high-ſhun Boor: to viſit Nobles, and inſpect Gentlemen; more narrowly then the ſevereſt Inquiſition.

Their Diſcipline Tyrannous.

A ſweet Religion for a Prince, to crouch to a *Crop-ear'd Bramble*: to be within the Laſh of every Jack-ſtraw, and ſnivelgut Changeling; not only to be ſentenc'd, to the Lockerum or Cambrick Penance: But to be unhors'd and Diſceptred too, when his Rebelſhip pleaſes: And what's this but kneeling to *Moloch*, that we ſo much rave againſt; overt Popery without a viſard Mask, or dark Lanthorn: which would quickly be more deteſted and cry'd out on; then the *Focage*, or the pedling *Brocage of Lombard-ſtreet*: Riſing to a greater Timpany of Diſh-clout Bondage; then ever *Athens*, *Rome*, or even *Egypt* endured.

Strandings Eſchewable.

Therefore Princes had need beware of theſe Quick-ſands; and the worthy

thy take Heed, they halter not themſelves: And whet a Knife, to cut the Thred of their own Honour; *Ducking to the Dagons of Sedition, will inevitably do the Work.*

SECT. III.

Par. 17.

Tidlings over-Fond and Dangerous.

BUT ſome Regard muſt be had to the *Herb-Eaters*: were not the ſcruple more Toying, than Marveils or Puſh-pin; 'twere Debatable: but to ſtrain at ſtraws, and ſwallow horſe-loads, is moſt unſufferable.

Admitting a Tenderneſs indeed, with ſome brain-ſick Profeſſour: 'Tis ſafer and more Conſonant to Chriſtian Policy; to imitate the *Fundaments* of the Common Law: *in ſuffering rather a miſchief, than an Inconvenience*: in expoſing our Feeble Brother

to be *Felo de se*, to Pine and Periſh too: then to affect the Church, with the leaſt ſpark of Schiſm: in dancing after a *Geneva Taber*, or *Northern Bag-pipe*; in Tolerating his Folly.

All's whiteneſs and ſanctimony no Offenſiveneſs offer'd.

But what ſtumbling Blocks offend the Cripples? The Road, as even and eaſie, as if Pav'd with Ice, or ſtrow'd with Dowl: more fragrant then Perfumes of Myrrhe.

Pulers to be tutor'd not Tidled.

If any offence 'tis *Taken not Given:* if an Humoriſt will not eat of good Food, when ſet before him; but out of Doggedneſs, Pule at the one as unclean, at the other, as Polluted: reject All and Starve, his ſuicide or Capricious Ruine, may (without Blame to Church or State) fall on his own Head, being his own Deſtroyer.

Cautionary Laws Requiſite.

But will not this *blockiſh Coyneſs*, enforce

force a Law? to prevent the like Humorous Novice, from self-Homicide.

Conſcience not reduceable by Storm.

They ſay there's no ſtorming the Conſcience: a ſtarry Fort, that can't be Reduc'd by Force: but by the *Spiritual Militia*, on precarious Terms, with *flying Colours*: leaving it ſtill, to bask in its own Phrenſie; waiting the good Hour of *Sarmacida's Victory*.

Apt Doctrine, to be Proſtrated to *Diana*; but the Feet of *Gamaliel* will brook no ſuch Oblation.

Par. 18.

Miſeration no good Medicine for Stubbornneſs.

IF a madman will not be rul'd; is't not lawful to uſe Force, and Corporal Pains, by breaking his Limbs, or more; to preſerve Him and others, if Danger command it? may we not Reaſon from the Body to the Soul: muſt we meet our Brother, Poſting to Hell full ſpeed; with Blaſphemy in his Mouth, and Apoſtacy in his Heart; and not ſtop his Career?

If

If fair means will not do it, why not foul (as ſome call it) or *Enforcement of Law:* with the Apoſtle, to *ſave his ſoul from Death*: And his Body too from *vials of wrath*, that otherwiſe might overtake Him, ſhould He wallow, in that damnable Eſtate: And others too, for their Recreancy and Remiſſneſs, in Permitting ſo much Deadlineſs to live: which by the Judicials was ſeverely Puniſh'd, and ought to be with us, with an *harder Penance, then Sanduls, or an hair Shirt.*

Righteouſneſs miſtaken.

Thus if the Church enjoyn *Unique Conſort* in Divine Worſhip: a wrigling Conſcience (to live lewdly at his own Rate) chops in; to go his own way, though it lead to Hell: if the Law arreſt this Caitif, to drive him into the Right: this is Perſecution. O bleſſed God, what prodigious natures, doth thy *Poor Spouſe* meet with? all Decencies muſt be Abandon'd: the very Bible burnt and the Alcoran profeſs'd; to tiddle every *Crack-brain'd Diſſembler, every ſniveling Tony*: otherwiſe to be Branded with Tyranny and Perſecution.

Par.

Par. 19.

The wildish Pretender possess'd with waspish Rudeness; scourgable by Law.

I'M inclin'd to Piteousness and Civil Quarter: but if the Hold of Blasphemy, may not be Assail'd, but the Reduction left to the Spirit; I doubt of a Convert, obstinacy being a *Misplea*, in the Leet of Piety, *not issuable in Heaven*: the Magistrate being Sworded, not to *trifle with Domitian*; but to *uphold Hezekias*, and *suppress Shelomithes*.

Neither is this Presidentless, for the potent Master of *Holofernes*, enjoyn'd universal Worship to the God of *Shadrack* and his Comartyrs, *Sub-pœna Capitis*, on Pain of Death. Unto *Daniels* God, was Ascrib'd the like Devotion.

Par. 20.

Blasphemy Brandable by the Civil Law Capital.

BY the Common Law, the Blasphemer is Infamous, and therefore grievously mark'd; with a Print of Horror: By the Civil Law He's punish'd with *ultimum supplicium*, even Death: *the executing*

ecuting Hand (according to the Father) *is ſanctified by the Blow.*

Vagrancy from the ſetled Church: in Law, a Partial Apoſtacy.

By ſome Books, I find wandrings from their Habit, or Order of Religion; to be Revoltings, or legally Apoſtacies: And that the Law, hath Provided, a ſpecial *Capias* to reſtrain ſuch Gaddings by Reducing them, to their Canonical Obedience.

Par. 21.

Conſcience in ſome ſort Governable by Law.

THus the Supreme (as *Vice King of the Soul*) may Command the *inward Man*: There's no Demurring to his Edicts, Contempt is no leſs than Damnable: if a Bur to the Soul, or truly nauſeous to the Judgment; Paſſiveneſs muſt be the Cure, and ultimate Appeal.

Unity in Religion Inforcible in Conſcience.

It cannot be Denied, by any Civil Chri-

Christian in his right senses, but that

The Magistrate hath Power in *omnia mala.*

The best Conscience is too bad and mendable,

On consequence then, the Magistrate hath Conusance over the Conscience.

Which is but Reasonable, for *temporal Rulers are bound to have a Care of Souls, as well as of Bodies: And must Answer if they Perish, through their neglect.*

Par. 22.

The Guardianship or Charge over the Conscience not Dispensable.

WHich we may more lively illustrate by a

Decision.

A Minor or one under 25 years of Age, is Inspected; and by false Proof, Adjudg'd to be at full Age: under this Pretext of Plenarty of Age, he receives a Debt due to him: which he spends loosely or squanders away.

2 *Questions.*

1. Whether the Debtor be sufficiently Discharg'd. 2. Whe-

2. Whether the Curator be Releas'd: or ſtill bound, to overſee the Truſt: and ſo liable to account for the waſting.

Payment Real a full Diſcharge.

1.

For the firſt: I find the Debtor ſafe enough, being fully Acquitted: the Common Law, by the 26 *Eliz.* doth in ſome ſence, quadrare or readily Aſſent, in caſe of Infancy: As in an Executor, if Payment be actually Prov'd, it ſhall Bind. But Regularly in moſt Caſes, *infra ætatem or Nonnage, is a good Plea, to avoid all Acts and Deeds.*

And the Civil Law is as Cautelous, the Minor being uncapable, to oblige Himſelf: *without the leave and Concurrent aſſent of the Curator.*

Diſpenſing unfeaſible.

2.

For the ſecond, (the *great Point in Controverſie with us*) the Guardian is liable, to anſwer the waſting: for that He ſhould ſtill have continued the Charge: which truly ſeems ſtrange, till the Fraud were diſcover'd; being done by Power of Law.

At Common Law, I agree the Guardian would hardly be Acquitted; though with the Privity and Intreaty of the Infant: if a waſte were Committed. But if by Order or Act of Law, I conceive the *Laches* were purg'd; and he totally Indempnified, becauſe Act of Law, *can do no Wrang*: And in that Caſe, the Law is bound to protect Him.

Religion unalterable. Princes muſt keep to Unity.

This ſtrongly proves, that the Magiſtrate is ſtill oblig'd (as *the Committee of Souls*) to Continue his Tutorſhip over the Conſcience; in *Holding to ſincerity in Religion: ſub periculo Animæ*, as He will tender the future welfare of his own ſoul: Though in *foro Civili*, here on Earth he may be Abſolv'd; I doubt of his Acquittal in Heaven: for that no Inſtrument or humane Power imaginable, can diſpenſe with *the Charge of Souls* (though with their own Conſent) in ſuffering them to purſue the Road to Damnation.

Pa-

Par. 23.

Wavering in Religion unlawful.

TO explain this Theſis more clearly by a

Caſe.

A. and B. 2 Co-Rogues or Comrades in Villany: conſult how they may more Colourably, Beg or Steal: They Agree, that B ſhall Cripple A by Maiming his Hand or Foot: which is accordingly, moſt Audaciouſly done.

2 Points.

1. Whether *A.* may have an Action or an Appeal of *Mayhem* againſt *B.*
2. Whether *B.* not Inditable, for mutilating or maiming his fellow Subject or Brother Rogue.

1.

To the firſt, *Damnum ſine Injuria*, becauſe of Conſent will be preſently pleaded.

'Tis much doubted, whether it be good: for that there's no Juſtifying, *Malum in ſe*; being a moſt nefarious and unnatural Act.

2. By

2.

By the 11. *Jac.* Consent will not free the Mangler or Maimer; from being soundly Fin'd, and otherways well order'd: for his Rascalness, in Mangling the Kings Subject: for

Instance.

C. kills D. with his Consent, and upon his Intreaty and passionate Request: this will not excuse C. from Murder, and hanging is too good for Rogues in Grain.

Now if we have no Power, over our Persons; to Disable or Spoil at will: much stronger are we Disabled, to Bopeep or trifle with Souls.

Verity not fickle, but solid and unchangeable.

Truth is *Immutable*: and will admit of *no change*, *no varying*: without the Hazzard of Heaven. And therefore Princes being Delegated by God, to oversee and govern the Soul; must not turn *Waverers*, by Tolerating *Weavers of new Gods*: they cannot allow

of an Alteration of Religion, by jeopardging the ſpirit to Hell: by any *mortal Conſent*, or *legal Contrivance*.

The Apoſtle is full in the Point, by ſaying the Magiſtrate, is *Dei Miniſter tibi in Bonum*, that is, the *ſubſtitute of Heaven*, for the ſafeguard of the Soul, as well as for the Tuition of the *outward Man*: And therefore the ſame Apoſtle, enjoyns ſubjection, not only for *Wrath, but for Conſcience.*

SECT. IV.

Par. 24.

To pride our ſelves ſager than Law: Is both vain and unmannerly.

'TIS a Maxime with Lawyers, that *none ought to plume Himſelf wiſer then the Law*: with ſober Heads *Oracle-like, being Unqueſtionable*: many Acts of Law (as common Aſſurances of the Realm)

Realm) are ſagely to be Agreed; and not finically Pry'd into by *peeviſh Eyes*: The like Compliance is to be Render'd, in *Church Diſcipline*, if once ſetled and Eſtabliſhed by Law. But Epheſian Diſciples, as Careleſs of the Goſpel, as Regardleſs of the Law; otherwiſe they would leave Bellowing againſt Order, and ſtoop to Power; they muſt be Lawleſs: And down with thoſe eaſie Mounds, and moral Regulations; which the *Maſters of Skill*, joyouſly treat with thankful Arms: Let ſome jocous Ramblers take Heed how they gibe with Law, to *hector Majeſty*! *'tis not good Joking with Edg'd Tools*, Deity hath a large ſtride to take off Scoffers at a Diſtance: And *haughty Saints are ſooner ſnapt, by the black Tempter; than poor Friarly or Bare-footed ones, paliſadoed with Humility*: which like Rampires of Fire, will ſhield them, againſt the ſharpeſt Conflict.

Spiritual Trivantings Cenſurable.

By Martial Law, every ſlide is a Crime in a Souldier; contrary to expreſs Command, or Common Diſcipline: the like by the Law Canon, *Behaviour beſides the Church Rules is ſcandalous*; Enquirable by

the Cenſures of the Ordinary: Emanſion or Military Loitering, is often ſentenc'd to the Wooden Horſe, or to run the Gantlet: if our Church Trivanters, find the ſame *Conſideratum eſt*, or ſage Rule awarded againſt them, let them Pack the right Horſe, and laud their own Stubbornneſs.

Par. 25.

The Forceableneſs of a Statute.

IN a civil ſenſe, with Legal Heads; an Edict fram'd by the King, and the *Common-Council of the Realm*: reſembles (in State) an Inſtrument or Charter at Law. And can any at Pleaſure, vary or Revoke his own Deed? *A Deed is ever taken forcibly and with Effect*; a Rule very trite and Common, yet of great Depth and Elegancy; founded on the very Pithineſs of Reaſon, which inſtructs us, to *ſet a Guard on our Tongues, and Hands too, that nothing eſcape either, but what's Judicious*: it likewiſe quiets mens Poſſeſſions, and leads the Judge and Jury to Certainty, in Avoiding a ſudden and Catching Opinion.

Hence

Hence ariſes the Principle in Law: *None ſhall be receiv'd to Stultifie or Diſable Himſelf*: that is, to play faſt and looſe, to nullifie or defeat his own Act.

For an Example

The actual Delivery of an Inſtrument, without words is good: if given as an Eſcrow to take effect, as a Deed, on Conditions performed; this binds not: or deliver'd triflingly, it invalidat esnot the Act: in both Caſes, the Deed abſolute; otherwiſe Deliveries by the ſpeechleſs, would ſignifie nothing: and many Deeds and Deviſes fruſtrated & avoided. Therefore if the Obligee bail a Bond, to the Obligor, to Rebail; yet the Obligee may retain it.

For a more vulgar Inſtance in Honour of the Common Law.

If J. S. grant an Annuity to J. N. with a clauſe of Diſtreſs, in his Manor of Dale; Provided it ſhall not bind his Perſon: And

in truth the Grantor has no such Manor; however the Grant good, and the Proviso void: for by the Maxime, *That none shall derogate from his own Grant*; the Person of the Grantor is Chargeable: I find the Civil Law not so Ample in this Point

As by Decision

Titus devises to Caius twenty pound, out of such a Coffer, or Closet in such a place; And in truth, there's neither Mony, Coffer, nor Closet in that place; the Bequest is void. But at Common Law, this Circumstance would not frustrate the Gift; if Assets elsewhere could be found.

The Effectualness of Deeds.

If a Deed defective, in the usual Forms, be *Janus-like* bifronted, bearing a double Aspect: Having two Intendments, the one with Law and Right, the other against Both: it shall be taken in that reasonable sense, it will bear; *never be void*,

void, if in any Congruity of Reaſon, it may ſtand good.

As in an obligation, ſolven'd to the Obligor; this ſlip is excuſable, and ſhall not avoid this Deed Poll: the Law ſhall expound the ſolvend to the Obligee.

Regularly in Law, if an Act will operate Diverſly: either by way of Intereſt, or Authority; the Law not delighting in Images and Shadows, but in Certainty, the nurſe of Quietneſs; ſhall aſcribe it to the *Intereſt, and not to the Power: Fiction muſt vail Bonnet to Reality.*

To explain this by a Caſe.

If J. N. infeoffe J. S. and his heirs of ſale: And by another Deed, inſtate him, and the heirs of his Body, of the ſame Land; giving ſeiſin according to the Purport of both Deeds: Quid inde operatur.

Limitations very Pickley, that poſe the beſt Students: that the Deed may not be impeach'd, but hold forcible and good againſt the Maker: And if not holdable by Intiretie, the Law will Marſhal it,

to Enure by Moities: that is, an Entailement in one half, with the Fee Expectant: And a Fee Absolute in the other. Thus Livery Expounded Effectually, against the Grantor.

The like in a *Syntax of State*; we are Tied up, from Whiffling and Grinning, against Uniformity: And must give Obedience.

Par. 26.

Denying of ones Hand not Available.

IF any plead *nient son fait*; Hoping thereby to slip the Collar, in Avoiding their own Deed: unless by *Nonage*, *Manasse*, *Duresse* and the like (being formally Pleaded:) 'tis more then Imprudent; frivolous in Law and Equity.

To Exemplifie this by *Troynovants* Case.

If A. owner of a Toft, or demolish'd Messuage in Cheapside; Converted into Ashes, by the late Fire: let a Lease Indented, for a Century or Milliary of years, of this Land to B. ex mero Jocu, Jocosely out of a Frolick and Dis-

port

port only: without any Terms to Rebuild, after the prescribed Form, rendring Rent: Here's a good Estate vested in B.

This sportful blind Bargain, shall work by way of Estoppel: And the Lessor (*A.*) during the Term Concluded; from Pleading the Act was Jocular, by way of Merriment: not at all serious, or in Earnest; ever legally intended, and so *nudum Pactum*, a naked and void Grant.

Mal-a-wise or Nescience invincible of the Law will nothing avail: so of the *Universal Deed, the Statute:* to which every one is a Party: 'Tis more than Turbulent, even Disloyal; in Ruffling against the Stream, to repeal our own Act: to baffle Authority.

Par. 27.

Law binding, though not solemnly Divulg'd, by open Publication.

A Charter (in Judgement of Law) is no more, then a fair Copy, of the minds of the Contractors: to prevent mistake and strife, Recorded into Paper or Parchment: when Executed, that is, seal'd

seal'd and Deliver'd, made Authentick; baptiz'd a Deed: which is a private Law between the Parties. So the *Publick Charter*, the Statute; in Construction of State, is no more then the *Resolves of the Supreme*, declar'd in Print: to which every Subject breathing, within or without the Kings Dominions (though never Proclaim'd) is bound to give Obedience: for if a Law be Proclaim'd, 'tis of *Favour*, *not of Necessity*, it being Presumable, none are Ignorant of their own Acts.

Par. 28.

The Blessedness of the Change.

GOD be thanked that after a long and base War, we are now in a Stable Peace: nothing unsetled in Church or State, but mutinous minds. *The petty Princes of the Country*, may ride out and take the Air; to Hawk and Hunt, and visit each other; without the least Danger, of Sword or Pistol: And the meanest Clown, walk abroad, to over-look his *Pecora Campi* or Grasing Creatures; without being bid stand: Pot and Pipe on his smoaky Hearth, and chat blind Stories

of

of the old Wives of *Windsor*, *Guy*, and *Colbrond*: And his *Brodet Swein*, requite him with the like *Stultery*, of *Bevis* and *St. George*: And Ethically like the Tatlings of Busie Bodies, or Bickerings of Shrews; go for a Gossops Tale, as inarticulate blank sounds.

The Sereneſs of a Record.

The like judicially, with the *Hond on the Book*, as our Bacon-folk phraſe it: *Jamee* may depoſe in the Affirmative, and *Temee* evidence a Negative: and neither Conclude Court or Jury. But if a Record once interpoſe, no Averments or Brawlings; of the *High-flyers*, or better ſort of Ruſticks: and the ſparks of all other Conditions, ſhall never Contradict it.

For Example.

If two Conſervators, or Juſtices of the Peace, aſſemble to view and ſuppreſs a Riot: if they Record the Offence, though in truth there was none; but All in Pace Dei, in Sobriety and Peace.

However by 15 R. 2. & 8 H. 6. there's no Traverſe or Creeping Hole, to get out of this Judgment: the

Parties

Parties are for ever ſtop'd, and without Remedy.

I learn by *Hildebrands* Caſe, that what paſſes during the Term; 'tis in the Juſtices breaſts and Alterable: But the Term ended, *Adjudicatum eſt*, 'tis only in the Rolls; of which *after the Courſe of the Medes and Perſians, there's no variance, no controulment.*

Wilful Blotting a Record, Capital.

Writings may be blurr'd, and Deeds defac'd and cancell'd; and the Purſe only ſmart for it, Ratably as the Damage will amount unto: But the Embeſiling and Raſing a Record, will coſt ones life. In brief, an Inrollment or Record, is a *Memorial of that Commanding Veneration and Verity*: that if Pleaded *null tell Record*, it ſhall be Tried only by it ſelf, being *Incontroulable*: otherwiſe there would be no reſult of Argument, and Controverſie endleſs.

Now a Statute is the *Higheſt Record*;

cord; againſt whom there's no Preſcribing, nor Alledging a Cuſtom: being the Convincing'ſt Evidence, and ſoundeſt Proof in Law: And to endeavour the ſubverſion, of the Fundamental Laws of the Land, is *High Treaſon*: And what more Poſitive and Fundamental than a Statute?

Par. 29.

Improbable to be bound to Tyranny or Superſtition.

CAN it be thought, that a *National Act*, reſulted by a *Convent of Honour*: Kneaded into Form, by the Critical Care of both Houſes; on whom all Power is Collated: firſt the Lords Spiritual and Temporal, in Preſumption of State, *All Worthies*: After recluſe Debates, digeſted into a Bill; in the Form of Law, with *Le Seigneurs ont aſſentes*: with the Concurrence of the Commons by the Direction of the Writ, *no Triflers*;

but

but *De gravioribus & discretioribus viris*, *the Eagles of the Countrey*; with *Les Communes sont assentes*: thus strictly Refin'd, by Grave Traverses and Forms of State; and lastly Compleated, with *Le Roy le Veet*, the Royal Assent: should savour of *Madrid* or *Argiers*:

Privity of Assent Obligatory.

Thus no Act to bind, unless made *per l' Assentments of the three Estates*: But in Law every one is Privy to an Act of Parliament, and *Consent judicially doth toll Error*: that is, no Excuse or Evasive Pretension, shall be Admitted against our own Agency.

To Expound this by a Case.

Lessee for years, at Common Law, makes a Feoffment in Fee, and deputeth the Lessor by Deed; to give livery and seisin, who pursuantly Executeth it.

Now though the Lessor, or owner of the Land; acts only as an Instrument; to Compleat the Tortiousness of the Lessee: yet done of his own Accord, the Law

Law intends it; as walking Hand in Glove with the Leſſee: with a full Aſſent, to paſs the whole Inheritance.

A ſtronger Inſtance.

The Pleading of a Feoffment in Fee, on Condition; without Deed and Reentry is good: if the Adverſary will agree the Condition.

Complotments againſt Law, unſafe and end in Ruine.

I wonder now, with what Confidence, *Les Miſeſants, the Affronters of Authority*, dare toot Sedition: in ſtanding out againſt Sovereignty, and Picqueering the Law.

This ſad Frowardneſs, towards the Church; is to every good Subject, an object of Mournfulneſs: that of all People we ſhould be moſt unſetled, as the *Vivary of Faction*: in ſtrugling againſt Law, to reduce this famous Empire, this *Angleland*, to a *Green Apron Government*.

SECT.

Section V.

Paragraph 30.

Sophiſtical Cavils or idle Belchings againſt the Common Law.

THE *Honour of England*, the Common Law; with ſome Diſſenting quaggey Heads: is overfull of Meanders and Intricate; too Tartiſh for ſome nice Craws: Though Admir'd in times paſt, by the *Romans*, *Saxons*, *Danes*, and *Normans*: And ſtill *Venerable with the World of Learning.*

The uſual Reproachings againſt the Law.

1.

'Tis tatled by Cavillers, the *Law being the Clock that we muſt go by*; ought to be more Legible and Plain, to the Vulgar: not coueh'd ſo Darkly, in meer Gibberiſh or Pedlers French; underſtood by

by few but Lawyers. Neither is this Fault alone found by them, but Complain'd on likewiſe (as an Abuſe) by one, Learned in the Profeſſion.

2.

Secondly, if the Law, be *Radiant Reaſon*, ſtreaming pure Excellency; why viſarded or bound up, in hard *uncoth words*, Diſcoverable by none, but the Profeſſors? which is no better than Tyranny by Authority: for in nature *Quod omnes tangit, ab omnibus Intelligendum eſt, That which Concerns all, ought to be Intelligible by All.*

3.

Beſides, 'tis too Prolix and tedious in Form; the Pleadings being drilling Criticiſms, or talkative niceties: indeed with ſome *plain Canting*, over Draining the Purſe; before we come to an Iſſue; to be put out of our Pain.

4.

If through vaſt charge, we hap to Catch a verdict; motion will be Allow'd, to arreſt the Judgment; and vacate all Proceedings.

5.

If we ſhoot this Gulf, and get Judgment, marking the Roll for Error, will ſuperſede it: And then we muſt begin

again, so that there's no End of Law.

6.

If for Testamentary, Matrimonial, or Sea-faring matters; we Repair (according to Custom) to *Doctors Commons*: we must Expect Rubbs too, the Checks of Prohibitions: so that with the Advice, of the ablest Sternsman, the Law is *Shelfs and Sands*; both chargeable and altogether uncertain.

These and the like toothless Rablements, with the unadvised (the *Tooters against Excellency*) are the Moles and Warts of the Common Law.

Par. 31.

The Cavillations Defeated and Satisfied.

1.

FOR *Horn*'s Complaint; that the Law is written in a brackish Tongue, and speaks not good English; for every giddy-pated Runner, to read and understand; by the *Wise* 'tis thought the better, to prevent suits: for small knowledge would set the Vulgar a Gigg, and fill the Courts with meer Brables: *If they Doubt, let them down with their Dust,*

to

to the Noble Lawyers, they'l ſoon Reſolve them.

Divinity is much in the *Mother Tongue*, with Aſtrology and other Arts; but who's the abler Divine, or better Aſtrologer? if *Coverted in Characters, uncipherable by none, but the Learned; 'twere the Better.*

The Law not Blind-folded, but viſible to Diſcerning Judgments.

2.

That the Law is Lovely; and out of Diſpute a Paragon: but Hooded too cloſe, and not Diſcernable by ſome open Eyes: Is no Diſ-worſhip and ſo ſlanderous.

Law-Terms words of Art, and moſt ſignificant.

The 36 of *E.* 3. allows of thoſe Veils, as Shades and Airs, incident to Science: vocables (though obſcure) very Emphatical, and moſt Expreſſive of the Law; and beſt known to Lawyers: the like in uſe with other Profeſſions, and ſo Incorporated with Law; that they're now become very Eſſentials: therefore words of Art, ſhall not be ſupply'd, by words æquipollent, or that tantamount, to the

ſame ſenſe and force: though in many other Caſes it hold good.

For Example.

A. voluntarily without any Provocation or Abuſe offer'd, and of precogitated malice ſlew B. Is not ſufficient, in an Indictment (in favorem vitæ) without murdravit.

In brief to throw by the Terms, as too cruſty for lay Teeth; were an over-haſty Inſpection: And might Endanger the whole Firmament of Law.

Pleadings Graceful and moſt Neceſſary.

3.

For Pleading, if meer Fidling and nugation; ſtrange the *Ingenium ſine Exemplo Maximum*, or *Advocate Laureat at Common Law*; ſhould Counſel the Student, to ſet his Courage chiefly; to learn the Art of good Pleading; as the *moſt Honourable and Beneficial Part of the Law.*

The uſe of Pleas: The Inveigler Impriſonable and Finable.

The end of Pleading, is to *unfold the In-*

Intrigues of the Caſe; to Evidence the matter of Fact: for *Ex facto Oritur Jus*, that the Court might more ſmoothly, and certainly Pronounce the Law. If not pertinent and cloſe, to the Point in Debate; Advantage may be taken by Demurrer: And for the Falſity of the Plea, the Judgment is *Capiatur*; for which the Pleadant ſhall be Fin'd and Impriſoned. But if Conſcious of his Error, He waive his Plea; He ſhall only be in *Miſericordia*, or Amerc'd.

Fraud and Falſhood Prohibited by Law.

Hence to avoid *Fourching*, or Circuity of Action, Negative Pregnants, Departures; with Duplicity and Multiplicity of matter; are Rejected: Becauſe of *Inveigling*, that is, wavering the Judgment, from one ſingle Point: which would render Cauſes, vexatious and Endleſs.

The benefit of Pleading: The Right Apparanted.

Many chance Caſes happen, which *primâ facie* ſeem Rugged and Knotty; but thrown into Form and legal Method,

by orderly Pleading: The matter is unknotted, and appears more ſmooth and Glib; for the Judge and Jury, to arbitrate Juſtice: Thus Pleading is no *Inveiglement*, waſting of Time, Pratling, nor Prating: But the *chief Ornament and Skill of Law*, in unravelling the Knottineſs, to reduce it to an Iſſue.

The Law no Art without Form.

In brief, Pettiſhly or ſowrly (for I find both Paſſions boiling Hot againſt the Lawyers) to reject all Form; were not only a great Take off, and Leſſening its true luſtre and Dignity; but *on the matter doltiſhly Debaſing it, as no Science.*

The Fairneſs of Legal Forms.

In *E.* 3. Reign, Pleadings arriv'd to a Compleatneſs; neither Limping nor Picked: Counts were not Abateable, if the matter or Cauſe of Action were fully Declar'd: And now nice Janglings, with all Ambuſhments *pur Enginer*; the ſubſtance of the matter appearing, are Rejected.

Vici-

Viciousness in Pleading Disallowable.

1. *Every Plea shall be taken most strongly against the Pleader; it being Presumeable, that every one is best Appriſed of his own Right.*
2. *That none are so Idle and Coltish, wilfully to vitiate their own Cause.*
3. *That every one will turn, the best side of his Coat outwards; that is, make the best of his own Case.*
4. *By a false or vicious Plea, the Pleadant loses the Advantage of the Law; and must pay Costs.*

Deluding Pleas Illegal. Small Faults mendable.

By *W.* 1. shifting and beguiling Pleas, are Prohibited: and a late Act of the Qu. doth provide, that want of Form shall not prejudice; except what the Party Demurring, doth specially shew: so that Pleadings at present, are not Prevarications or gingling quiddities; meer Quirks or Quillers of Fraud: But *Forms of Art richly useful, and more stately than Studs of Gold.* In fine, *Beau-pleader* or Care in Pleading, would prevent the Chancery

of Trouble, and *ſave many ſweet Pounds in the Clients Purſe.*

4.

By Arreſt of Judgments, many are thereby Diſmis'd from being oppreſs'd: the Circumſtance of Fact by Error in Pleading, more clearly Ariſing; and Juſtice more ſafely and ſpeedily Adminiſter'd.

5.

For a Writ of Error; which is no more then a *Commiſſion, to diſcuſs and reverſe Miſtakes;* I ſee no miſchief thereby: for the Manucaptors muſt *ſtare Juri*, that is, ſatisfie the Condemnation, if the Judgment be Affirm'd: neither will the Principal, rendring his Body, anſwer the Law, without Satisfaction; as in other Caſes.

6.

The Inhibitions ſo much Exclaim'd on, and voted obſtructive: by heady weak Judgments; the Law is therein Defam'd, becauſe Miſtaken: for in their right Conſtitution, they're of admirable uſe and neceſſity: To prevent *Interfering of Courts*, keeping every Judicatore, within its proper Bounds: That the Cauſe be not wreſted *ad aliud Examen*, before a *remedileſs Trier*: And the Client thereby, between two ſtools fall to the Ground, and be Cruſh'd

eruſh'd to pieces: on good Cauſe ſhew'd that the Court has been miſ-inform'd; a Conſultation by the 24 *E.* 1. is granted on Courſe, and the Cauſe Remanded, to its proper Court.

SECT. VI.

Par. 31.

Complainings againſt Equity.

ADmitting the Common Law, the *Son and Heir apparent of Reaſon*; pretty Juſt and of eaſie Addreſs: the Courts of Equity, with *Diſſenters* are Burdenous, *ſucking Shavers and gilded iniquity*: Being direct whirpools, one order begets Another; and we are ſtill ſwung round, Toſs'd from Pillar to Poſt; from Report to Exceptions: Till our Pockets are turn'd outwards, and at laſt Drown'd; for want of *white Earth* to wade through.

For a Cauſe to be Depending, ſeveral Revolutions of Mercury; 3 or 4 Prentiſhips is frequent: 'Tis better to put up an Injury, and *throw our Right down Thames*, *then*

then pray Relief in Equity: The charge ſo great, the Delay Intolerable.

The Freekiſhneſs Reſponded.

For the ſluggiſhneſs of Equitable Courts; in Killing the Orator Piece-meal, with ſwooning Fits: and Reviving Him again, as long as there's any Life, left in the Pouch: is an ignorant Miſtake.

They're *Rivers of Mercy*, *in Aſſwaging the Grimneſs of the Law*: the Cauſes are often weighty, having been long at Law; and they *uſually put in at Equity, for a Breathing*; *as well as for a final Diſpatch*: if they find ſome Pauſe, they may fall out, with their own *Comitial Spirit*, or litigious Itch, that will wrangle with *Goliah* for a wiſp of ſtraw: not blame the Court, that dare not to be over *ſpurring in their Hearing*, *leſt they aſſign the Child to the wrong Mother*.

Equity Limited.

Neither are Courts of Equity, *a ſic volo ſic Jubeo*; altogether Boundleſs and Arbitrary: Decrees muſt be *Sana Diſcretio*, founded on *Diſcretional Piles*, *after the Form of Law*: for ſhould Equity meddle with matters, properly Iſſuable at Common

mon Law, ſavouring of Freehold; 'tis Prohibitible: by *Huſſey* Chief Juſtice, ſhould Equity venture, to ſneak a Judgment: And Fleet the Parties for Contempt, a Court of Law, will diſcharge them. But in ſome ſpecial Caſes 'tis held Unlimitable.

Law unerrable: Juries when Attaintable.

If a Court of Law judge amiſs, Error leys to redreſs it; if a Jury wilfully pervert Juſtice, againſt their Evidence: they are Puniſhable by an Attaint.

For an Example.

If a Freeſment in fee, or an Eſtate for life, be veſted in John a Nokes, and they find Kim Kam, quite Croſs from the Fact; though Ignorant of the Law in that Point: they're in Danger of an Attaint.

The like in Equity, Decrees wreſted beyond the Standard of a good Conſcience: 'tis Reverſible by Review, or Bill in Parliament. So that the Law is Abſolute, *the Firſt-born of Excellency*, and near Infallible.

Par.

Par. 32.

Chancery legally Stated.

THe world is generally out in their Conceptions of that Court; for properly 'tis not at all made up of Conſcience: of a mixt nature I Agree it, and ſo *Conſcience may come into the Chorus, and ſit by Equity in ſome Caſes; to allay and ſwage the Summum Jus*, or ſeverity of Law: But for the moſt part their Stalls are ſeveral.

For Example.

If a non Compos mentis give away his Goods, or paſs his Lands by Record: it ſhall not only bind him, but All others for ever: Becauſe of a Maxim in Law, and 'tis Ruled that the Keeper of the Kings Conſcience, ſhall afford no Relief againſt a Maxim.

Yet He ſhall not ſuffer on a Criminous Account, becauſe the Law pities his Infirmity: why not the like in the other Caſe?

Caſe? now, can it Accord with Conſcience, that a *Driveler or Fool natural*, ſhould make a good Grant in Law; that knows not the Right Hand from the Left; nor hardly an Hog from a Dog? or that the Gift of an Infant, though given by his own Hand; that happily can't tell Twenty; nor a nine Pence from a ſhilling, ſhould not be void in Equity? ſeveral other Inſtances, that I could Cite, ſeem to weigh much againſt Conſcience.

Law not always Meetable by Conſcience.

I confeſs my ſelf a *great Admirer of the Law*, and therefore ſhall be Huſh: Though as to Lawyers there are invincible Reaſons given, in Defence of it; and ſhould it be otherwiſe, it might ſhake the whole Courſe of Law: let this tutor us then, that Law muſt not altogether be meaſur'd by Conſcience: *If Enacted it muſt be obeyed.*

Par. 33.

More clamorous Censures and Lowings against the Chancery; Discepted and Taken off.

THE Chancery is the *Commanding Court*, and out of Dispute, of undeniable use and Excellency: when kept within its Bounds: otherwise the Law would prove in many Cases, an absolute Tyrant; and not to be Endur'd. The Consequences are so vulgar and easily to be Conjectur'd, that I need not Enlarge on so obvious a Truth.

1.

Were the Proceedings shorten'd; and the Flippancy of Motions, to multiply order upon order, and Report upon Report; with other out-slips, Revis'd and Amended: the Court would be abundantly Honoured, and the oppressed much Rejoyc'd and Repair'd.

2.

A peremptory Time should be Assign'd to Answer; otherwise the Bill to be Decreed, as Taken *pro Confesso*: And why should it be otherwise? since 'tis *natural for the weakest Person living, to Appear and make his Defence*, if wrongfully charg'd: And to be Reimburs'd of the Complainer;

er, if unjuſtly vex'd: And therefore Shifting by Buying of Attachments, and Dallying with the Court; implies clearly Guilt: And ſo no Injuſtice (though unheard) if the Cauſe be Given, againſt Him.

3.

The ſame at Common Law, is the Conſtant Practice upon Iſſue: for if the Defendant will not Appear and Plead, Judgment *on nient Dedire*, or by Default on Courſe is Ruled againſt Him. Which proves as Forcible, as if obtain'd on full Evidence.

Nay in Criminal Concerns, if the Party *Encoup'd* or Arraign'd; ſtand mute and refuſe to Plead: He's uſually ſentenc'd to *Peine fort and Dure*, or Preſs'd to Death. A grievous Puniſhment, which certainly none but the *Meſcrue* or *Deſperate in Guilt*, would undergo. If by Pleading, or Palliating their Crimes by a Civil Defence; they might probably find Favour.

4.

A ſet Time likewiſe in their Commiſſions, to prove their Allegations: with the like to the Defendant, to Diſcharge and Acquit Himſelf: would ſtrike off much Fraud and Delay. And not to be

ſuf-

ſuffer'd, to move for Commiſſion upon Commiſſion, and Examinings upon Examinings: the uſual Practice, with the wealthy and vexatious, to weary out the poor Adverſary; and thereby obtain their Ends.

5.

Some conceive that Attachments, Writs of Rebellion, Serjeants at Arms, and the like, are not of abſolute neceſſity; eſpecially to the Ends they are now Commonly made uſe of.

Neither can they Divine; if ſuch Times be Peremptory upon them, to Appear *per ſe*, or *per Alium*; in Perſon or by Attorney: what miſchief can Enſue. Unleſs good Cauſe be ſhew'd, to induce the Court, to Enlarge the Time.

6.

Sequeſtrations may be neceſſary, in caſe of Diſobediences to Decrees: But what need of *tedious Proceedings*; which are mighty Expenſive and Dilatory: and in *effect a kind of negation or Denyal of Juſtice.*

This with all dutiful Reverence, to the *Supreme Court*: conceiving what I humbly offer, will in no Reſpect, retard Juſtice; nor blemiſh Equity.

SECT.

SECT. VII.

Paragraph 34.

The ſuppoſed Deformities and very Freckles of the Common Law: Inſpected and waſh'd off.

IF the 25 *E.* 3. 17. were Review'd; and the Common Law reduc'd, to its old Conſtitution, of *Summons, Attachment and Diſtreſs Infinite*: according to *Magna Charta, nullus liber Homo Capiatur*, the Law would be eas'd of many Exclaimings: and the *Tout le Commune*, or poor Subject much enlarg'd in his Immunities.

Par. 35.

To the Inſolvent a Capias hard Juſtice.

IF the Fortune cannot Pay, for the Body by ſuffering, to imp it out; Appears ſomewhat Cruel: There being no *mean or valuation between a mans Perſon, and a ſorry Debt.* 'Tis true, no Fault can be

Assign'd in the Law; because it doth but perform its office: And the *Life of the Law is the Execution thereof.* Yet surely the Intent of the Law, is mistaken and abus'd: the Law Designing the Body to Custody, only as a Pledge, to avoid Fraud: that if no Estate can be Retriv'd, then the Body to be Dismiss'd: for so I find by the Perusal of several Records: more expressly in 14 *E.* 3. *Rot.* 106. where the Debtor being long Imprison'd, and by Inspection being found Decrepit, and much stricken in years, unable to undergo a longer Durance: the Judges awarded an *Ire sine Die*, or an absolute Discharge.

41 *E.* 3. *Rot.* 27. the Duresse being Adjudg'd unfit, to undergo *Panam Carceralem*, or immuring Hardships: the like Rule was Pronounc'd, and the Party set at Liberty. From both I infer, that the Law primitively never intended to Enslave the Body.

Persons and Lands Originally free.

The Common Law, on Judgment for Debt or Damages, gave only a *levari facias*:

cias: which way of Execution was alſo Limited, Leviable only on Goods and Chattels: the *merum Jus*, or Freehold was ſtill Protected; and the Body too for two Reaſons.

1. For every one to follow his Calling: and the painful Tiller, to purſue his Georgical Drudgeries: for without the Plough we cannot live.
2. For the Body, to be in a Readineſs, to ſerve the King and Country: And without Officers and Servants the State cannot ſubſiſt.

Par. 36.

The Body not Puniſhable: nor Pawnable for Debt.

THE proper Remedy, Provided for Debt, by *W. 2. C.* 18. is by *Fieri facias*, or *Eleg.* ſo that the Body by that Law, is ſomewhat excus'd: if the Law can be ſerv'd otherwiſe. But the *39 Eliz.* an Authority in very Point, declares the Body only as a *ſalvo Cuſtodias* or Pawn, that if He die in Execution, without ſatisfying: Recourſe may be had to the Eſtate, Heir, unleſs *Riens per Deſcent*, or Executor, if *Aſſets intermains*; becauſe

the Law has not its End, which is Payment of the Debt; or ſatisfaction.

The Adminiſtrator Releas'd, if the Party die in Execution.

I find by a latter Judgment, *Trin.* 10 *Jac. Rot.* 38. by three Judges one only Diſſenting: though the Body be no actual ſatisfaction, ſuch as is expected: yet 'tis an Aſſimilary one or ſatisfaction in Law; for ſhould the Priſoner give up the Ghoſt in Execution, the Creditor muſt Acquieſce; and the Adminiſtrator no further Chargeable: becauſe of his Election, the Law being ſatisfied.

Par. 37.

The Ancientneſs of this Hardneſs.

WE read that the Debtee, would ſeize not only the Body, but the Children too of the Debtor; as Bond: to pay the Due in ſervage. Which is better then a Priſon; for there's Poſſibility of an Enlargement to the one: and of ſome ſatisfaction to the other. Nay the *arcta Cuſtodia* is hinted as a Carceral Puniſh-

Puniſhment for Debt; by our Saviours *Utmoſt Farthing.*

I Agree ſuch ſervitude was Conniv'd at, *propter Duritiem Cordis*; but whether Agreeable with the Law of nature, or the Law written I much doubt: for ſurely none ſo ſottiſh, to be content of Bonds and Reſtraints: if without Covering and purely naked, having nothing wherewith to ſatisfie.

Unconſcionable to Pen up the Body: If unable to Pay.

To ſpeak Candidly without Mincing or Dawbing, doubtleſs *Dives* is ſtrictly bound in Conſcience to ſet poor *Lazarus* at Liberty, though not Compellable by Law.

An horrid Cruelty to Cut the Body in Pieces, and to diſtribute it among the Creditors: which ſome father upon the Romans. A moſt ridiculous and brutiſh Cuſtom, and Impoſſible to be thought Executible by rational Creatures.

Par. 38.

The ſurmiſed conveniences of Arreſts.

'TIS weakly Conceited by the ſteel-hearted and ſome Doters; that if this Hank be Remov'd, *the world will ceaſe to be Honeſt*, and *People will never come by their own*: ſo that there's a neceſſity in Preſervation of Trade; to Continue this ſevere Courſe.

A Capias diſadvantagious to Trade.

Truly no: How did the Nation flouriſh many Hundred of years; when the Law was otherwiſe: why ſhould we Conceive, that virtue has ſeen its *beſt Days*; or that *Honeſty is quite Extinct and loſt*? 'twere more Commodious and ſafe for the Rich; for then they would be wary, whom they Truſt; and call for their Dues in Time: before the Debt run too High, and become unpayable.

Tenuity of Fortune if unavoidable, not Impriſonable in Conſcience.

Many become Inſolvent, by the Act of God: as our Saviour ſaid of the blind man,

man, that neither He, nor his Parents had ſinned; only to ſhew the Pleaſure of the Almighty.

The like in many mens ſlenderneſs of Eſtate, God is pleas'd to Afflict them in this Life with Poverty: though the Heart be willing, yet their ſmallneſs of Condition, will not permit them to Atteſt it: To puniſh then the Afflicted, by ſultering and ſotting Him up in a noyſom Hole; becauſe Poor and unable to Pay; is ſtern Juſtice, and moſt Extorcious: not Practiſable with Chriſtians, or indeed moral Perſons.

Par. 39.

Shufflers and Sharks deſerve Priſons.

FOR the deboyſt ſpender, with meer Rooks, that riotouſly Diſable themſelves: or thoſe that Conceal their Eſtates, and out of ſharking Corrupt Principles, will not ſatisfie: 'Tis no matter if their Bodies ſuffer, and be Expos'd to ſhame; as ſpectacles of wickedneſs,

Better ſet them at large to work: then keep them as ſots.

'Tis Conceiv'd more Advantagious for the Common Good; they were Employ'd,

either at Home or elsewhere: under an Assurance of such services duly Perform'd; of an Enlargement: which would create in them a future Honesty, in making them wary; how they inwrap'd themselves, in the like Bondage.

Par. 40.

Suretiship questionable in Conscience.

SOme Conceive it Canvas Justice, for the surety to make Good the Debt; in case the Principal fail, or will not.

For more sureness Sureties Demanded.

Where the Law does not Distinguish, *Distinguendum non est*, we must not separate: now in Law they're all Principals, All Equally and Joyntly Bound: And each liable *in solidum* to the whole Debt, at the Election of the Lender. And though it fall often Heavy on some, who are forc'd to Discharge the whole: though they never shar'd in the Loan, nor so much *as Drank for it*. Yet in Justice 'tis their Debt, and the Creditor left to his Choice, to take it of whom He will: 'Twas their misfortune, or rather Folly to Engage for a Pauper; or the ungentle, that would leave

leave them in the lurch. The Obligee is out of Purse, and had not others Engag'd, would not have lent at all; and so does no wrong.

Gentle usage due to Sureties.

The Civil Law is very Gentleman-like, and Conscionable in this Point, in *sadling the right Horse*: for the Creditors must first sue the Principal, and levy their Debt on him: and if a *nulla Bona* be Return'd, then to try the strength of the Sureties.

Ferreting the Surety most Afflictive, and Partial Dealing.

But at Common Law Generally, they deal very Ruggedly; in Hunting after the Surety, and plague Him to purpose: leaving the Principal as unconcern'd, when the charge, and easiness of Reaping their Due, on the Principal; were the same.

Par. 41.

Peers why Exempted from an Attachment on Civil Process.

THE Peers of the Realm, are Priviledg'd from this ill-favour'd *snapping*

ping way, of being *Caught by the Poll*: on the Presumption of Law, that *the most Honourable, are the likeliest, to be Right Honest*: and will Pay even before Demand. And likewise that their Fortunes, are sufficient to satisfie; without Attaching the Person.

The Comminalty blam'd, for Enthralling themselves.

The Commons of England, some Conceive were much overseen and unadvised: when they *mingled their Wine with Water*; in subjecting themselves as Bond: in Exposing their Bodies, to be Enslav'd; when the Law, Proclaim'd them Free.

Par. 42.

Reasons why the Body should not be Distrain'd.

1.

IN Nature, Consequently in Judgment of Law, *nothing is Distrainable but what can satisfie*: now nothing can satisfie, but what's Marketable and of value; and that must be an Estate either in Lands

Lands or Goods: If neither, then *Impotentia excuſat Legem*, even *the King muſt loſe his Due*: for the Body is neither Saleable nor Eatable; without we turn Cannibals, and deviate into Brutes.

2.

In Diſcretion the Debtee ſtands in his own Light; and renders his Debt more Deſperate: by Diſabling the Debtor, Shutting Him up in a languiſhing Condition, which if at large, happily his Induſtry or good Fortune, might inable Him, to afford Satisfaction in Part: and *ſome Bread better then no Loaf*.

3.

In State, they deprive the Sovereign of his Subjects; able Bodies (according to the Intent of the Common Law) that might be ſerviceable in Peace or War.

4.

In Juſtice, 'tis very untoward and againſt Conſcience: for the Debtor when He's labouring, to diſcharge his Duty; to be ſnap'd upon an Utlawry, and put to a great and unneceſſary charge, to Reverſe it: when if forborn, He might perchance, ſatisfie the Debt. I find the Civil Law very Candid in this Point, by their *Dies Juſti*, or *Days of Reſpite*: a certain Time of Forbearance, for the Debtor

tor to turn Himself in, the better to inable Himself for Payment.

5.

In Divinity: the Body being useless, not vendible even for a Farthing; 'tis more than unwise, with some, even Barbarous and Inhumane, *racking the Body; to Dice the Bones:* and pray God one Day it be not laid to their Charge.

Par. 43.

The Known Inconveniences,

1.

MAny mischiefs fall out, on the strict executing a *Capias*: more then Brawls and Batteries, oftimes *Effusion of Blood.* A very unchristian thing, and ought to be Redress'd.

2.

The Debtor is frighted, and debarr'd of his Liberty, in Traversing his occasions, which might accommodate his Debts.

3.

The *Tickers* finding the Law on their side, that they can Command the Person, when they list: they're more Entic'd to Trust, and *so hand-smooth help many Swillers,* and *Swaggerers out of their Estates.*

4. It

4.

It Creates ſpend-thrifts, Knowing their Laviſhneſs may be Pomp'd up: They're more Allur'd to Rookings, and ſo never mind to check their Runnings out: which doth occaſion many mens Ruine, and the overthrow of great Families.

5.

I could wiſh there were no Cauſe, for the Law to uſe theſe *Pinchings*: for Running on Tick proves but ugly ſhifting and Ruffian-like; and ends in Bitterneſs: a ſweet Comfort to peep through a Grate: ſome chuck down, with care to Keep the Wolf from the Door; will ſpoil the Trade of Uſerers and Fetterers.

The Doleſulneſs unravel'd.

6.

The Truth is, the Confidor or truſting Dealer, is but ſmoother'd in his own Feathers: for to pack off his Wares at any Rate, He readily Books the looſe Gallant; beyond the Reach of his Purſe: And if his Fortune fall ſhort, then He Curſes his Confidence, and in wrath takes out a *Capias* for his Carkaſs, to piece it out;

out: And this pays as much as Throwing his Cap againſt the Skie: for *where one Crawls out, Twenty ſtick and are ſtifled.*

7.

'Twere more Quiet and Credit, for both Parties, to [illegible]ver their Horſes: the one wave Tickin,, the other not to want; till he hath got *Bayard in the Stable*, ready chink to pay.

Par. 44.

The unſufferable Abuſiveneſs of an Attachias.

THeſe *Capia's* are ſo exorbitant, that they'l even Attach a Corſe: and if the Attacher be not Compounded with, continue the *Attachee* above Ground; to the ſhame of Chriſtianity, and Poyſoning of the Quick: this I have ſeen, and the Body kept unburied in the Church, under pretence of Debt: fooliſhly Conceiting the Friends would redeem it. Many on this Jealouſie, interr their Friends skulkingly like Dogs? whoſe Bodies when living were the *Temples of the Holy Ghoſt*: for fear forſooth of Arreſting the Hearſe.

A Corſe

A Corse not Attachable for Debt.

A most horrid and simple Impudence: and the Law most egregiously Dishonoured, and mistaken: for in speculation of Law, a *Capias*

Can serve but, { 1. *Ad Respondendum*, or, 2. *Ad Satisfaciendum.*

either to Procure an Answer, or make satisfaction: Now what Answer can a mute Corse or liveless Corps make; or what satisfaction can it render: *Just as Good and sensible to demand Dues of a Stone, as of a dead Person*: neither can the Law be so simple and unreasonable, as to expect it: 'Tis warranted by the Statute, to take the Body in the aforemention'd Cases, but *Lex non præcepit vana & inutilia.*

1.

The Law doth *never Enjoyn Impertinencies*: therefore on necessity, it must be reasonably understood, *of an animate living Body; not an inanimate and dead one.*

2.

Besides when Dead, it ceases to be a Body; 'tis properly then (at most) but *Cadaver, a Carkass or Frame of Dust and Ashes*: so that after the Dissolution, natural-

turally and so Legally 'tis no Body: the Writ then on Course is *superseded*, because not Executible: There being no such Body then in *Rerum naturâ*, according to the intended Tenor of the Caption.

3.

In Judgment of Reason; no Benefit reapable by the Execution: But a *Caddaverous and Shadowy one*; which the Law (*the great Administer of Wisdom and Piety*) will never offer: It being more Collusive and Absurd, then Barbarous and Uncivil.

Thus the Law is most unworthily sham'd and Abus'd, through Ideocy and Malice.

Par. 45.

Not molestable by every Parochian Demander of Dues, besides Law.

ANother Exorbitancy is likewise as frequent and Conjectur'd for Law by the Clergy: to stop the Corse, if Travailing through their Parish, offering to interr it, or pay Duties.

A brave custom to inforce a man, to be Buried where some please; or to satisfie their simple Avarice: They had as Good, and quite as Reasonable; Prescribe

to

to draw their Testamenes, and Carve to themselves, *like the Friers and Devouters*: what Part of the Fortune they think best.

Suppose one die in *London*, and desire to have his Bones laid, at the Mount in *Cornwal*, in *Cumberland*, or the remotest Part in *Wales*: let any modest Person Compute, what an easie Charge it will amount unto; happily the Defunct, Dying but small in Estate, or worse then nothing: If every Parish must be satisfied, meerly for passing through.

A sweet nonsencestical Custom, and against Law: and so I find it Adjudg'd in point. *Trin.* 15 *Jac.* in a Prohibition.

Staying or Disturbing the Bier, under the prementioned Pretensions: is Detestable in Law.

Neither can we Conceive, that the *Mirror of Justice and Piousness*, the Law, altogether so Lame and Defective: But that the offender herein, is more then a grand Trespasser; and cannot scape unpunish'd: without all Doubt, He's many ways Punishable.

1. By action of the Case, for the uncivil Abuse: Conceivable by the Heir, or Trustee for the Sepulture or Burial.

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to draw their Teſtaments, and Carve to themſelves, *like the Friers and Devouters*: what Part of the Fortune they think beſt.

Suppoſe one die in *London*, and deſire to have his Bones laid, at the Mount in *Cornwal*, in *Cumberland*, or the remoteſt Part in *Wales*: let any modeſt Perſon Compute, what an eaſie Charge it will amount unto; happily the Defunct, Dying but ſmall in Eſtate, or worſe then nothing: If every Pariſh muſt be ſatiſfied, meerly for paſſing through.

A ſweet nonſenceſtical Cuſtom, and againſt Law: and ſo I find it Adjudg'd in point. *Trin.* 15 *Jac.* in a Prohibition.

Staying or Diſturbing the Bier, under the prementioned Pretenſions: is Deteſtable in Law.

Neither can we Conceive, that the *Mirror of Juſtice and Piouſneſs*, the Law, altogether ſo Lame and Defective: But that the offender herein, is more then a grand Treſpaſſer; and cannot ſcape unpuniſh'd: without all Doubt, He's many ways Puniſhable.

1. By Action of the Caſe, for the uncivil Abuſe: Conceivable by the Heir, or Truſtee for the Sepulture or Burial.

2. In the Court Christian, pro Reformatione morum, by Ecclesiastical Censures, the Law of Christ will not suffer such impious Assaults, to go unpunish'd.

3. By Indictment at Common Law, at the Kings suit: for Debarring his Subject, the Common Benefit, of the Law of Nature.

Par. 46.

The Duties we owe unto the Dead are chiefly three.

Sepulture a natural Debt.

1.

Funeralia; decent Interrment, a Common office of nature; unto which we are mutually Bound, to each other to perform; as Due unto Humanity: for that assuredly, it must be one Day, our own Turn unavoidably to pray the same. Therefore Administration by a Stranger for the Sepulture is Allow'd by Law.

This moral Courtesie was taught from Heaven, which induced our Ancestors, to Erect their peculiar Sepulchers, for themselves and Family. Therefore an undecent

cent Funeral, or any rude and freekish Directions, tending thereunto; like unto that of the Stoical Vaunter

Sepelit natura Relictos,

Are Inhumane and Disallowable by Law.

As by a Decision.

Mævius made Lucius his heir by Will, sub Pacto, or Conditionally: to throw his Ashes and Bones into the Sea.

Two Questions.

1. *If* Lucius *did forbear* (out of Loyalty to humane Decency) *Performing the Condition: whether He could hold the Inheritance as Heir.*
2. *Whether the Condition* was *Insane and void.*

Resolv'd.

To the first, that the non-performing of the Condition, was rather Commendable then Questionable; in Committing the Body, to civil Burial. And hence interring

Rites are call'd *Justa*, because *Due by the free unwritten Justice of Nature, or Law of Civility.*

2.

To the second, That the Condition was more then Windy: if the Testator in true senses very wicked, most Absurd, and so void: However the Estate Compleatly Holdable, in Law and Conscience.

The Ground Hallowed by Funeral Obsequies.

Burial is so highly Indulg'd, and strictly observ'd by the Canon Law: That the very Place, where an humane Body or Head is interr'd, is instantly Consecrated and adopted Religious. And for the future, render'd unsaleable; even unmorgageable, only Demisible.

What good Christians were some Railers against Decency, of late with us: scornfully refusing, the harmless Celebration of the Liturgy. Throwing the Body into the earth, as Rudely as Pigs into a Stey; without Reverence or Devotion.

Pompous Interring I agree is undecent, because vain and often overchargeable: many

many times obtruding a Faſt on the poor Creditor, for other Peoples Feaſtings.

Cenſuring Petty and Baſe.

2. *Civil Memory*: in point of generous Breeding, we ſhould keep a watch on our mouths; and ſuffer nothing to eſcape us, even of the Living; but Reſervedly: And not make it a Common Practice, like *Titlers*, and *Story-mongers*; meerly for Diſcourſe ſake, to defame the Abſents without Cauſe: unleſs we are particularly Conſulted with in Private or Publick, to give an Account of any mans Credit and manners: Then we ought to be free, and deal Candidly; otherwiſe ſilence is our Duty in Civility and Conſcience.

No ſpeaking of the Dead but Candide and Caſte.

But for the Departed we muſt never mention them, but with Honour: *a good Fame being the only Intereſt, and Right of Nature, which they ſtill Retain below*: to violate thoſe dues, were moſt ungracious and ſuperlatively Profane, beyond the Curſedneſs of *Charles Martel*.

No biting the Absent, nor wrestling with Spirits.

If Bad, let their unhappineſs die with them: if good, let them be Remembred, with a joyful Applauſe; for ſo brighe a Saint.

Deviſes Choicely Regardable in Law and Conſcience.

3.

Performance of the will: for the Good of his Soul, as ſome Books term it: or rather for the ſafety of the Party, entruſted to interr Him; that He do Righteous things: that his own Spirit might find Reſt in the other Life. For God is Juſt, and let Him expect, *what Meaſures he gives, the ſame will be meated unto Him.*

Paganiſm very Preciſe in Executing Wills.

The very Paynims though in the Dark, yet (by the Peeps of nature) were ever moſt Curious, in Gratifying the Requeſt of the Decedent.

As by a Deciſion.

A famous Wit, on his Death-bed willed with a very paſſionate Deſire that his Works might be burnt.

Two Queſtions.

1. *Whether the Deviſe not void; becauſe Injurious to publick Intereſt; and the Advance of Learning.*
2. *Admitting it good: whether private Requeſt, ſhould be preferr'd before the Common Good, or General Advantage.*

Reſolv'd.

1.

That the Deviſe may be Conceiv'd valid and ſoberly Conſiſtent, with Law and Conſcience: It cannot be Denied, but in Law, *every one may do with his own as he pleaſes*: if otherwiſe, the Law deſerves to be Coated and Bibb'd, to talk of Propriety. If ſo, why Publiſh'd againſt the Vote and Direction of the Deviſor.

2.

Every one is beſt ſkill'd to take meaſure of Himſelf: And what Judges

Civilly Construed Modesty, as to the obvious sense: perchance the Requester knew it more fit and Requisite to be taken literally: Because of Imperfections best known to Himself, not so easily Conceiv'd by others.

Therefore I cannot but Applaud, the Judgment of the Emperour: that held the Concealing more Civil, than the Divulging.

The Common Law Favourable to Wills.

Testaments as the final and Consummate Acts of Mortality, are very preciously Esteem'd by all Laws: They are Alterable and may be nulled by a latter, and invalidated by Eschetable Misdeeds: yet they shall never be void, if by any Consistency of Reason; the Intent of the Devisor, can possibly be Pick'd out.

As by a Case.

A. devises all that he hath to B. to do with it, at his will and pleasure.

Three Points.

1. *Whether a good Devise, because not so legally Amplified; according to the usual Form.*

2. *Whe-*

2. *Whether Lands and Tenements, as well as Chattels do paſs: for want of apter words.*

3. *What Intereſt paſſes; whether an Inheritance Abſolute, or Modal and Qualified.*

Reſolved.

1.

In other Conveyances, Demur might be made what Right paſs'd: But in *Deviſes the beſt ſhall be taken, to fulfil the will of the Teſtator*: Therefore the Bequeſt good.

2.

By the Intent, a fee ſimple paſs'd of all Reverſionary, as well as preſent Rights.

3.

It will be objected by the Learned, that there want Eſſential words to create an Inheritance: and haply not Publiſh'd *Animo Teſtandi*, and ſo void.

4.

The Deviſor ſhall be Preſum'd, to lie in *Extremis*, and likewiſe *Inops Conſilii*, altogether deſtitute of Counſel: And ſo Diſabled, to give in that Exactneſs of Form: which

which in his Convaleſcence, he might have done.

2.

It muſt be granted, that the Teſtator was Cited by an irreſiſtible Summons to his long Home; and there to Abide: And ſo cannot appear, to Defend or Explain his own Act. Therefore what he Declares ſhall be taken *Valediſſime*, moſt favourably and forcibly; *for the Benefit of the Deviſee.*

Par. 47.

The Inducement to this Freedom.

I Write not this Dogmatically, to teach the *Seniors in Wiſdom*, *or Overſeers of State:* nor Captiouſly, in finding Fault with the Law: only Piteouſly, out of Tenderneſs; that the *poor Languiſher* might be Reliev'd, and the Law Explain'd.

And likewiſe that the Unchriſtian Abuſes, of Diſturbing the Dead; *unleſs ſentenc'd to Infamy by Law*, may be Redreſs'd: whoſe Bodies when Alive, were the *Receptacles of Gods Holy Spirit.*

SECT.

SECT. VIII.

Par. 48.

The whole Scheme of Law Disquisited and Affirmed.

LET Frumpers shut their Lips, and forbear Carping at *Lex Terræ*, or the Common Law of *England*: that hath tenter'd the prime Wits of all Ages, *in Polishing and Trimming*: that 'tis now a little Decay'd, or at all out of Fashion; needing a *new whamp*, or *even an underlay*, is not Possible: Examine the Law-Books, they'l Endure the severest Test; some sneak'd out in Rude Times to prop up broken Printers; may be flat and sapless: But the licens'd ones, the old *Vouchers*; Codes gravely learn'd and Philosophical. The meanest may well be Read, by the *Wisest*; *being altogether needless.*

The Uprightness of the Law.

The Common Pleas of *Meum and*

and Tuum, or Commutative Juſtice; are ſo Plain and Indifferent, with a *Saunce Regard de nulluy*, that hardly any Judgment ſo *Hollow*, to open his mouth againſt it.

The Graciouſneſs of the Law.

For thoſe of the Crown; the *niceſt Concern*, there's no Law under Heavens, *of a greater Clearneſs*, than the Law of *England*, without the Cruelty of the Torture, or that which is near as Bad, a tedious Languiſhment; before offenders are call'd, in order to their Deliverance: Therefore Deſerving better Language, than ſome clamorous Aſperſers; are pleas'd to Afford it.

For Example,

An Indictment or Verdict, that B. killed C. ſo Defendend', in Preſervation of his own Life; is not ſufficient: without Reciting the ſpecial matter. That the Court might adjudge of the Inevitableneſs of the Neceſſity: to direct the Jury accordingly.

Par.

Par. 49.

Law the Pandect of Perfection.

IN fine, without Playing the Panegyrick, or Magnifier of Excellency; the Law hath the *Qualifications of an Angel*; in being on every side, most *Civil, Reasonable and Honest.*

1. *The Civility of the Law.*

If the Defendant be summon'd to appear peremptory at a Day, and mischances interpose as *Mayhem*, sickness, with other like, which hinder from appearance at the precise time; if He appear by his *Responsalis* or Attorney, (the Law hating surprise) He shall be Essoin'd or excus'd from the Penalty of the Default, and a longer Day granted Him.

And if an Essoin be once cast, no *ne Recipiatur* can be enter'd, only Adjourning it, and looking to the Continuances.

2. *The Reasonableness of the Law.*

One shall be *Tenens per legem Anglia*, or *Tenant by the Curtesie*; of a Rent, though the

the Wife die, before the day of Payment: And of an Advowſon, though ſhe ſlip away; before the Avoidance. Nay, if the Advowſon, become void by Lapſe, during the Coverture; and the Wife dies after the ſixth months paſs; before any Preſentment by the Husband: And the ordinary Collares to the Avoidance, yet the Husband ſhall have the Benefit, of the next Avoidance: as *le Tenant par le Curteſie.*

Reviver of the Curteſie.

A. marries B. an heiress, and hath Issue: and afterwards commits Treason or Felony, and be thereof Attainted; but pardon'd: yet the curteſie is loſt. If he chance to have any Issue after the Pardon, such is the ſuavity of the Law to the Coverture: the Privilege is Revived.

If the Dowreſs encroach, and hold more then her Due; or the *Commoner by Appendancy or Vicinage*, ſurcharge the Common; which is but foul ſharking in both: Therefore by *w.* 1. they ſhall be Admeaſur'd.

ſur'd. The Writs are *Vicontiels*, the matter Diſcuſſible and Determinable by the Sheriff.

3. *The Honeſty of the Law.*

A *Nude Promiſe binds not*, and why otherwiſe; for what loſs can the Defendant ſuſtain; when he neither gave, nor Aſſum'd any Conſiderable Return. But if one bid another, Heal ſuch a Wound, or Repair ſuch an Highway: Admitting both Contracts made, without any *Promiſed Recompence*: In ſuch Caſes the Law (Abhorring Baſeneſs) ſhall create a Promiſe, and imply a Reward; with full Damages: ſhould the Contractor approve Himſelf ſo unworthy, in denying ſatisfaction.

The like if any ſpecialty be executed beyond Sea; to avoid a *Fayler of Right*, 'tis Triable at Common Law; the Plaintiff may ſuggeſt, 'twas done at *Toledo* in *Spain*, at *Todington* in the County of *G.* whether any ſuch Place in that ville, 'tis not material: the Iſſue will be ſingly whether the Parties Act and Deed.

In brief, (if one grant *the veſture or the Herbage of his Lands*; though no Inheritance paſſes the Grantee may enter and main-

maintain an Action of Trespass: But if he grant *the Profits of such Mannor to J. S. and his H^s. with Livery*; the whole Land passes.

Par. 50.

The nobleness of the Law.

THus according to the 2 *E.* 3. 14 *E.* 3. *Common Right, the Maintainer of the Crown*, the Law must be Agreed, a *deep Science and mistical Beauty*. For had not the Law, been as secure for the Subject, as safe for the Sovereign: There's no Doubt (as hath been observ'd) but those several Revolutions of Conquerors; with the *late sidling Usurpers*, that ever had an *Akino Tooth at the Law*, would assuredly have alter'd it: If not wholly laid it aside, and Introduc'd their own. Which is a satisfaction very full to any Civil Judgment; of its Gravity and sufficiency: That 'tis *truly Excellent, and beyond compare.*

SECT.

SECT. IX.

Par. 51.

Groundleſs Cries againſt the Pontificial and Civil Law.

THE Roman Law with *Don Whyners*, is a Choak-pear too and needleſs; and may well be thrown aſide: I have been an unhappy Porer, in all Polemical Learning, Diſcovering little: but by the ſmattering that I have of that *Noble Science*; I cannot but deem it Imperial: *well ſuting with the Flavour, or goldy Locks of Monarchy.*

Why neceſſary.

Neither is the *Regency Municipal*, Compleated with Law; without Eccleſiaſtical and Civil Law Courts: without their Company a Decay of Juſtice and Feebleneſs in the Crown, would enſue: for Cauſes *meerly Spiritual*, are exempted from *Weſtminſter-Hall.*

All Contracts and Querels, made *ſu-*

peraltum Mare on the Ocean; *append' a loy d'oleron*, belong to the Admiralty: An Ennoblement to the Crown, to be serv'd with *general Lawyers*.

The great Reverence the Law ascribes, to Hallowed Places.

I wish our Heterogeneous Brethren (*the Ravers against Monarchy*) were meeker spirited: setting the same value on the Church; as the Law hath done in all Times: for at Common Law, if one be Assaulted and Beaten too, in a Church, or Church-yard: 'Tis not Justifiable to rerurn Blows in his own Defence. By *H. 12 Jac. B. R. de son Fort demesne*, will not Excuse, which the Statute of *E. 6.* Confirms.

Par. 52.

The Antiquity of Ecclesiastical Law.

NEither are the *Halimots* or Ecclesiastick Courts at all Encroachers: any new Crept up Jurisdictions, but as *Fundamental and Antient as Justice it self*: for we read, that *Jehosaphat*, in his visiting of *Judah*; to redress many Enormities, in Church and Commonwealth, ordain'd Judges

Judges not only ſecular: But at Jeruſalem, for the *mere Spiritualia*, He erected a Court Chriſtian: for ſo is the Text, poſitive in the Point. *Amariah* in Cauſes Spiritual, was *Chief Determiner*: And in Civil, *Zebediah the Head-Decider.*

Why call'd Ordinary.

Hence it is that the Law, moſt Emphatically ſtiles the Biſhop Ordinary: Becauſe the *great Miniſter of Decency or Judge of Order, in Eccleſiaſtical Affairs.*

Theſe diſtinct Conſiſtories are likewiſe Aſſis'd and Aſcertain'd, by our Saviours Comforting the Apoſtles againſt Perſecutions: of *Delivering them up to Councils, and ſcourging them in Synagogues:* ſeveral other Proofs I could bring, to prove the Pontifical Juriſdiction. But in ſo clear a Text, 'twere *caſting Water into the Sea.*

Par. 53.

Foreign Tranſactions Impleadable.

TRanſmarine Contracts, or Bargains made beyond-Sea, are triable before the Conſtable or Marſhal: for the Admiralty is ſolely confin'd to the Sea, *Extra Corpus Comitatus*, out of any County.

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Derogations of the Common Law Prohibitible.

But any ſpecialty or Contract, made for Payment of mony, or Doing any Act; wherein the Common Law can adminiſter Juſtice. Then by 8 *R.* 2. 13 *R.* 2. and ſeveral other Laws; neither Conſtable, Marſhal, nor Admiral; muſt intermeddle: becauſe Derogatory to the *Law Paramount*, and they Act without Authority: Therefore Countermandable by Prohibition.

Par. 54.

Tranſmarine Acts how Triable.

IF any be kill'd beyond Sea, an Appeal by 1 *H.* 4. 13 *H.* 4. and the 25 *Eliz. Donties* Caſe, lies by the Wife or Heir, before the Conſtable or Marſhal: whoſe Proceedings are by Witneſſes or Combat.

Pyracy, with other Miſdemeanours on the Sea, belong to the Admiralty: or Attaintable at Common Law by the Statute: The ſame Law reaches to *Ireland*, becauſe but one Admiral in both Kingdoms. So that the Law is *Tranſcendently Com-*

Compleat and Juſt: Healing every Gangrene Perfectly, but Pettiſhneſs and Malice.

Par. 55.

Prejudice Requited.

BUT *ruat Cælum*, all Excellencies muſt be ſtrangled, that ſtand in their way: Tranſcendencies Devaſted or laid waſte, that matches not their Froppiſhneſs: without Droling, well Apaid are ſome of both Profeſſions, for their *ſpiteful Declaimings and ſnappings againſt Prelacy.*

Thus the Law, *the Protectreſs of Life and Donereſs of Fortune*: is well Rewarded: not only a Mock with ſome Pſalter Scholars; but a by-word and Wake of Mirth with the Siſterhood. I wiſh from my ſoul for their own ſakes, they would give over Tatling againſt Law, and Pecking againſt Majeſty.

SECT. X.

Par. 56.

Murmurs againſt the Meritorious.

AS to the Exceptions againſt Minority: that 'tis *Jeopardous, to truſt the State-Pinnace; with a green-Headed Steerer.*

By *Copley's* Caſe I agree it hath been Practis'd, and ſome Colourable Reaſons may be Render'd: And the Practice not ſo Perilous, becauſe no Judges of Record: though I fear the Law will hardly juſtifie it.

Infancy a Conceiv'd Diſablement.

I.

In Common ſence and Reaſon, can it be Imagin'd, that an Infant that cannot govern himſelf; being ſo Adjudg'd in Law, therefore uncapable of all Judicial Acts: ſhould be Ripe enough for *Ponderous Affairs*, to perſonate his Country, not only to bind Himſelf and them; but likewiſe the whole Kingdom.

Why

Why not Elective.

2.

If a Minor be Arrayed on a Jury, He's Challengeable: much ſtronger muſt the Law be, if Impanell'd on the *grand Enqueſt of State:* If deem'd unfit to try, a private Cauſe; the Law can never be ſo weak, as to adjudge him ſufficient, for the *Exitus Reipublicæ*, or *publick Iſſue of the whole Nation*: therefore we may invincibly Conclude him, non-Eligible, becauſe unſerviceable.

Par. 57.

Every Member a National Agent.

'TWill be Reply'd, having a free Choice; they may ſend whom they pleaſe: *if their Grievances are lamely Repreſented, or their Intereſt ſorrily manag'd: the Loſs will be ſolely to themſelves.* This is *neither Law nor Reaſon.* I agree in Point of Freedom; if I have Buſineſs to *France*, I may ſend whom I pleaſe to Croſs the Sea: But if my Errand be of Importance and skill in Managing; 'tis no ſmall Error, to entruſt a venterous undertaker, without Language or Experience: there be-

ing no thoughts but the buſineſs muſt miſcarry.

Much more if of *Publick Concern*, wherein a whole Nation muſt ſuffer; what Diſcretion can it be, to employ a Youth in Affairs, that *require the greateſt Maturity*. For when Return'd and actually ſitting, he's no Procurator, for a ſingle Intereſt; but the univerſal: the *general Concern of England*. And therefore if *nient ſuffiſant*, not fully Accompliſh'd, according to the Summons: he's unduly Elected and Rejectible.

Par. 58.

Miſ-elections occaſion'd, by Treating of Tumults.

BUt how is the Law faulty? if any Miſcarriage, they may thank themſelves; and not the Law: being moſt Curious of publick Welfare. Therefore if any Miſchief, 'tis a Chick of their own Hatching: for by the Directives of Law, the chooſing of *les Grandees des Counties*, as the 27 *E.* 3. calls them, ſhould be *De Probioribus & Potentioribus*, the Civil'ſt and moſt Potent; that is, in ſuppute of Law, the moſt *literate and virtuous*: not the ſtrongeſt in the Beef-pot, or the moſt Powerful, with

with the ſpells of *Bacchus*; to Canvas and Feaſt Multitudes; ſtuffing their Guts to idle Purpoſe, and againſt Law; to ſhout and bluſter for them. By which means the moſt *Perſonable*, capable to ſerve, may be beaten off the Pitt; and ſo Bolted out.

Par. 59.

Non-officiating, an Abuſer Inditeable or Expellable.

THE miſcarriage is very bad; for many out of Pomp and Vain-glory, may covet to be Senators: Who, when they come to Act, may altogether find themſelves impatient of the *life of State, which is Diligence*: And never attend. Plays and Taverns affording them no ſpare Time for publick matters; which doubtleſs is redreſſable, by Information, or by vote of their own Houſe; either by Commitment, or Expulſion for the neglect of their Office.

Par. 60.

Diligence and Intendance Requirable by Law.

THis Cavil reſembles *Silenus* Statue: they can never be good Patriots, that

that prefer Maſquing and Bibbing, before the Diſcharge of their Office: Being *ſent to ſuperviſe, that* Aſcanius *live ſafe, and* Coridon *at Hearts eaſe*: and *non-Attendance hath been the loſs of Monarchy.* But in this the Chooſers, wilfully Confound themſelves; by their Haſtineſs of not reſolving upon a Stanch Senate.

Par. 61.

The Qualification. Non-Reſiancy Dubitable.

IN Reſult of Law, the Elected are the *Chief Viſitours of State*: and therefore ought to be Qualified, as the 14 *H.* 8. deſcribes ſome Profeſſors, *Grave and ſad men*, well Experienc'd and Sober, *Moſt Pregnant and Prudent*: according to the 23 *H.* 6. 15. the *notableſt Knights and Reſiants*: from which two Doubts may ariſe.

1. *It may be quæried, whether any under the Degree of a Knight be Chuſable.*
3. *Whether Non-Commorancy, be not a Non-Ability; Rendring the Candidate unqualified: and ſo uncapable to be Elected.*

1. To

1.

To the first, I conceive very clearly, that the Law is not so to be Taken literally: Confining the choice to that Degree, If the Election be made *De magis sufficientibus*, of a Person *duly Qualified*; it will be sufficient enough.

2.

For the second, it may be doubted, like that of a Jury which must be of the *Vicinage*: *Because presum'd to have the best Knowledge of the Issue*; and so most apt and Capable, to be a Trier or Judge of the Fact: The like in this Point, some Conceive the Elected ought to be, *Commorant or Demurrant*, on or near the Place; for which he serves. On the Presumption, *that he best knows their Griefs, and so best able to negotiate.* By that Law, the *Chusers ought likewise to be Residents.* From this also another Query arises.

3. *Whether any but the Constant Inhabitants may Chuse: Because they're Adjudg'd to be best Knowing, to instruct their Referees.*

3. For

3.

For this I find the Practice various, or rather out of Diſpute: and therefore may paſs undebated.

By the 7 *H.6*, 12. *W.* 1.5. and the 7. *H.*4. the Election of thoſe *High Inquiſitors of Redreſs* ought to be free and Indifferent: *without Prayer or Precept.*

Par. 62.

Members of Parliament Friendly and Grave. No Claſhers nor Clinchers.

THE Demeanour of the Houſe, Conſiſts principally in four Reſpects.

1.

Serious and reverent Speeches, without the leaſt ſpice of Sedition, againſt Settlements: or any by-Dartings on the Meen or Movings of any Member: which is Diſgraceable by the Bar. Claſhing being a mighty Diſhonour, that the publick Emiſſaries, ſent to be the great Keepers of the Peace; *ſhould not only break their Truſt, but give bad Example, to tremble the Nation.*

2.

To avoid Curioſity of Speech: in Coveting to ſhew

ſhew Rhetorick, to be blown up for Oratours; to looſe the matter. Therefore plain and ſincere Delivery moſt Pithy and Grave; beſt befitting ſo great an Aſſembly.

Strains of Wit, often rambles into more then Quibling and Clinching; ſometimes Claſhing by altercation of words: Therefore not ſerious and appoſite enough; for the Gravity and Deliberateneſs of weighty Debates.

3.

Slowneſs in ſpeaking to a Bill, at the firſt Reading; or rather wholly ſilence: let them weigh and thorowly digeſt it in themſelves, e're they offer a Debate.

4.

Laſtly, not to be Cavillous and vain in ſpending time in needleſs Orations: but to Hear with Patience, and ſpeak with Deliberation; as the matter ſhall require.

The Remedy. The Suffrage Enlargeable.

Were the Suffrage of 40. *s. per Annum*, enlarg'd to 40 *l.* or more: and the Suffragers to appear at their own Charge (and why not? it being their own Intereſt) as at other publick Concerns: otherwiſe the Election to be void, and the *Eliſors* or Chu-

Chuſers, well mulcted for their Partiality and Bribing. Co-peers or grave Endowments, would be elected, and the Nation well ſerv'd.

Neither will the limiting the choice, to an hundred Pounds; with the Excluding of Miſſive-Labourings and fooliſh Topings: be any Debarring of a Common Vote. If the Statute of 40 s. how Lands then went, and the value of them now; with the Motives of Altering the Law, from general ſhoutings, be duly Perus'd and Conſider'd. But unleſs this Exceſs of Tumulting and Entertainings be Redreſs'd: He that will pamper Folly higheſt, though he run in Debt for his Feather; ſhall be Elected: And the *Subnobles* or well ballaſted Gentlemen, paſs'd by; as uſeleſs ſhrubs. More might be ſaid of this Point, but without *Artemons* Buckler, a buſie Eſpyal may occaſion Trouble.

Par. 62.

Their Rights Maintain'd.

FOR their Priviledge, being wholly Exempt from an *Attachias* or Common Arreſt at the ſuit of a Subject: liable only *ad ſectam Regis*, at the Pleas of the

the Crown. Freed likewiſe from other moleſtations at Law; as *ad Teſtificandum*, but barely to appear as an evidence; 'tis but Reaſonable and moſt neceſſary. Otherwiſe the Publick might be at an Hazzard: and 'tis fitter (according to the Maxim of *Artificial Reaſon*) that, *Private ones ſhould ſuffer, then the whole be Endamag'd.*

This Priviledge no Entail, or perpetual Exemption: only Temporary, while they're imbuſied about *Affairs of the firſt Magnitude*: which by *Trewinnards* Caſe, is founded on Preſcription: And in Law, *Euery Preſcription, which tends to the general Welfare, is good: though poſitively prejudicial to ſingle Perſons.*

Neither is this *Peering* any Diſcharge of the Debt; only a ſuſpenſion of the ſute, during the Seſſion: therefore no miſchief. And *there's no Law Enforces People, to book or bond priviledg'd Perſons.*

Par. 63.

Servants Protectible.

FOR their menial Servants, or uſual Attendants: to live likewiſe unmoleſted, is no way unreaſonable but fitting: It being but Convenient, that pub-

publick Miniſters, or the *Lower Nobles*, as the 35 of *E.* 1. ſtiles them, ſhould enjoy all accommodable Rights, according to the Rule of Law, *Cedant Privata Publicis*, *Privates muſt diſpence with Wrenches, and Falls too, for the general Intereſt*: therefore the Speaker (after his Complement of Diſabling) in his Oration to the Sovereign: more eminently pitches on four Petitions.

1. *For Freedom of Speech.* 2. *That all Priviledges incident to themſelves, or Servants, might be kept Inviolable.* 3. *For Acceſs to his Majeſty, on Emergency of occaſion.* 4. *That their Debates, might be Conſtrued with Candour; as tending to the general Good.*

The Bonâ fide *Servants only Privileg'd.*

To protect others, under Colour of Regardants, or Retainers, is againſt Law: Diſregarding ſuch Protections, according to ſome Lawyers, is ſtrictly no Contempt.

Par.

Par. 64.

Their Debates bounded.

NEither are the lower or upper Walls (according to ſome looſe opinions) by *Lewknor*'s and *Wentworth*'s Caſe; any *Sanctuary for licentious Tongues*: for ſhould any futile Perſon fly into Impertinencies, either againſt the Power, that Conven'd them, or the Orders of his own Houſe: He's uſually puniſh'd with more then Kneeling, happily *Tower'd* for his Pains. The one being never call'd, nor the other ſent, *ad Rixandum*, to brawl and brabble, in being Factious: to alter the Law, or ſquabble with Majeſty. But barely *ad Conſulendum*, to Conſult and Adviſe; to offer their Preſſures, and with all Humbleneſs, pray Redreſs.

Par. 65.

The end of the Convention.

TO what end are they Convented? in *Cuſtodiam Pacis*, in Cuſtody and Defence of the *prime Bleſſing of Body and Soul*; to wit, Peace: for without it an Angel newly lanch'd from Heaven, will be put to no ſmall Trumps, to Win the

Game of Content: for if Peace be out of the Pack, Happineſs is diſcarded, and no Life can be had. Therefore on neceſſity, the skilful ſhould only be Elected to that Sage and Regal Council: in brief, *by Conſtitution of Law the worthy only Eligible, and Capable of the Truſt.*

Should weak ones, as it hath been ſeen and felt too (through Fraud and Tumult) creep in: I Conceive the Return not good: but the *Eſſier* or Election undue and void; being not Purſuant to the Writ: therefore by the Burgeſs of *weſtbury*'s Caſe, the Party Elected is Ejectible; who for his ſhallowneſs of Judgment and other Miſdemeanours was voted out, and another choſen in his Place: for Laws ought to be Coin'd *by the wiſeſt*; otherwiſe we may be Edicted to hard obedience, nay impoſſible.

If Fluſterers (through the Bribings of ſtrong Bub) will hoot in Cyphers; *Contrary to Law, and Deſign of State*: the Roll never quite foul and Blotted. Figures enow are ſtill ſent to caſt up the *Ardua Negotia*, or *Popular Grievings*. All merit Knightly, in this *great Inquiſition* for their Pains of Voting and Attendance.

Theſe Wide-mouth and Wooden Objections

ections at preſent are Abſurd; and may be well thrown over the Horſe Main; being as impertinent as the King that courg'd the *Helleſpont*: for by their Actings, I find naught but *Gravity and Wiſdom*: And therefore to be Embrac'd with *Bone-fires of Joy*, for ſo *Pick'd an Aſſembly.*

Par. 66.

No Parliament without an Act.

THIS held in ſtrictneſs of Law, properly no Parliament, only an Aſſembly; *unleſs ſome Act paſs, or Record be made thereof*; though all Formalities (requiſite in State, as one would think, hath been perform'd) to denominate it a Parliament.

1. No Meeting on their own Heads, without a lawful Citation: being ſummon'd by orderly Precept to the Sheriff.
2. No ſurpriſe without due notice of his Writ to the Country: who by virtue of his *Warrant Royal*, Convene ſuch a Day, at the uſual Hours, directed by Law, to appear and Elect.
3. They perſonally appear, and make their Choice: the Party Elected accepts the Truſt, and is formally Return'd.

4. The two Houſes meet at the Day, ſet in the Writ: with the *Appearance of his Majeſty, or his Chancellour*; (if in *Remotis*) to ſignifie his Call.

5. Imagine ſeveral Sittings, with interlocutory Diſcourſes and Conferences of both Houſes: the Journal full of Movings and Debates, with Bills paſt, ready for the *Royal Hand*.

Now what ſhall hinder, but according to the meaning and Common Acceptation of the Word; here's a Compleat Parliament; yet in Law without, ſome Act paſs'd, ſtrictly 'tis no Parliament, only a Convention: And ſo ſeveral times Agreed by all the Judges of *England*.

I confeſs this is no *ſmall Nicity*: for in Law, in caſe of an Arbitrement, if once a Controverſie be ſubmitted by Deed, or by Parol, and Arbitratours actually Choſen; and they meet and Debate, labouring to Reconcile: though their Labours prove ſucceſsleſs, making no Award; yet 'tis proper to averr an Arbitration; as in Pleading to ſay, the matter was ſubmitted to Arbitrement: The Arbitrours meet and Conſulted, Examining the matter in variance, in order to end all Differences; but could not Agree to make an Award: in this ſenſe 'tis good enough,

to

to alledge an Arbitrement and Arbitours, though *nullum fecerunt Arbitrium*: why not the like in the Parliamentary Point?

Obſequiouſneſs Applied.

No: I find the Modern Authorities clear againſt it: though by the 18 *R.* 2. a Judgment given in *B. R.* was revers'd, but no Statude made, yet Adjug'd a Parliament.

Let this leſſon us, how vain and Impudent, Conſcience is; to winnel, and noſe Law: *if Law, there's no Diſputing.*

Par. 67.

Whether the whole Eſtabliſhment, may be ſubverted.

'TIS ſcrupled by ome Conſultors, or gingling Enquirors, whether *perverting Acts* are Binding: I ſhall not trouble my Head in ſtating this Curiouſneſs: But at Common Law, if one depute a Proxey, to give ſeiſin on Condition; and he delivers it Abſolute, 'tis void: or if the Warrant be abſolute, and He deliver it Conditionally, 'tis the ſame: The like in this Point, the Members of that Conſultation, are no *Com-peers of Sove-*

reignty: at moſt, the one but the *Princes Adviſers*, the other the *Peoples Delegates*; both limited and Controulable: being Entruſted *ad tractandam de quibuſdam urgentibus*, to treat of *certain Arduous and Important Affairs*: and therein to uſe their Power Prudently; in preſerving Fundamentals, and accommodating the State by redreſſive Acts; in lopping of all Excreſcencies, or annoying Stems, inconvenient or oppreſſive: but not at all Authoris'd, to *mangle Settlements, or diſpute with Princes*.

Par. 68.

Their Priviledges not Diſputable.

BY *Thorps* Caſe, the Priviledges of theſe *High Counſellors*, are not to be touch'd on: much leſs to be deſcrib'd or determin'd. To buſie then our Pates in deſigning the Form or Juriſdiction, of that tranſcendent Court; is for ſilly Queſtioniſts: for *every ſober Perſon is bound, to ſhape his Conceptions thereof; with an humble and obedient Reverence*.

Par.

Par. 69.

The Priviledge not Releasable, Transferrable, nor Extinguishable.

I Conceive the Priviledge neither ſuſpendible nor Abateable, by any private nor even judicial Act, of the Perſon Priviledg'd: without notorious Breach of Truſt; and the Peril too of the Publick ſafety.

Neither can this admit of any Curioſity or wonder, when his Condition is throughly viewed, and in what capacity he mov'd.

The capacity being publick: ſo not to be quitted, on a perſonal Account, or Privacy of Deſign: And therefore if weary of his Procuratorſhip, He ought to ſignifie his Debility or Wearineſs to Continue: And the Delegators or Parties Electing, left to their choice, to depute another in his ſtead.

Not Deputable or Aſſignable.

Hence it is Regularly in Law, *that he cannot Depute a Proxy*, or Aſſigne: becauſe choſen and Truſted by others, Moving in *auter Droit*; and ſo not Maſter of himſelf,

to Assign or transfer the publick Deligacy or Trust to others.

Trusts not Delegable.

To illustrate this more plainly by the Common Practice: If A. be intrusted by B. for the use of C. and others; and he accept the Trust; he can hardly transfer this Trust, without the consent of the Parties entrusting: should he do it without their Privity and Assent, Equity (as well as common Civility) will take it ill: and award the Parties Damages, the Injury being Relievable by Action.

The Case of Factorship or Common Attorneyship makes it plainer: for if either undertake more, then what they can well perform, if the Clients receive loss, 'tis Remediable by Action: so they're Confin'd to Mediocrity, though they usually moyl themselves, over shooes and Boots, and engross more then they can well grasp.

Much stronger in the Parliamentary undertaking; there's no Remedy over, if any, the Damage may be so Immense: that

that 'tis Impoſſible for a ſingle fortune, to ſatisfie: therefore on neceſſity, *the Priviledge not Quittable:* otherwiſe the Publique ſhall be in a worſe Condition, then the Private: which no Law will admit, but ſtill on the Contrary, the Rule being undeniable over the whole Face of the Earth, *Better one ſuffer then the whole.*

The Caſe lately of the Lord *S.* in *B. R.* was ſtrange, where on a Trial by Conſent the Priviledge was Halted at: though He affirmed very poſitively a ſurpriſe, being fain to attend publick Affairs, wholly taken up therewith, and ſo Diſabled, to fit himſelf for a Trial; And therefore Prayed a further Day: 'twas Denied; with ſome judicial Aſſertion, that the Priviledge was wayv'd: which may be Doubted; becauſe I take *the Lords to ſit, on the Behalf of the whole Nation, as well as the Commons:* and therefore their Hinderance as publickly Damageable.

Neither can Conſent in Adjournment, though a vacancy from the *publick Employ*, quit the Priviledge: becauſe Demandable at the Royal Pleaſure, before the time appointed.

In Prorogations I agree the Priviledge ſuſ-

ſuſpended: But that's by Act of Law, and a *quaſi Diſſolution for the time*: and ſo no Right violated, the Publick at no Detriment or Danger.

Should any be ſo eaſie in Relinquiſhing the Priviledge, I Conceive 'tis a Contempt, and no ſmall Diſhonour to the Houſe: no way to extinguiſh it but by Act, and I much queſtion, whether that can do it, becauſe of *Entailing a Wrong on Poſterity*.

With the Wiſeman, *Silence ſeldom hurts*, but *Openneſs is a certain Damage*: I ſhall therefore Conceal my thoughts, and Conclude the *Priviledge better Preſerv'd, then Expos'd to ſuſpenſion or Diſpute*.

SECT. X.

Par. 70.

Captious Brablings againſt Courtiers.

'TIS pretended that ſome Courtiers are very ſtrait finger'd; no Holy-water gratis *on free-Coſt*; without ſome Pounds ſecur'd afore-hand: And the Mediation coſts more, then the Sute is worth.

Tell

Tell them of a Prize, huge kind, and Courtly till the Buſineſs be well Beaten into their Heads: then they fairly leave the Starters the Bag, and Beg it for themſelves; ſhifting them off, that they came to late *the Birds were ſold.*

Their Ironies retorted or the Brabler muted.

I have heard ſuch Jiggs have been danc'd, and thought no Breach of Truſt or Honeſty: only a Raillery of Wit, or ſmall Court Frolick, to boaſt over a Bottle of Wine: but rarely, no *Common Gallyard.*

Let not the *Right Noble*, Knit the Brow at theſe Carpings: Railings againſt Eminency, being the fifth Element, and Odes of Courſe with looſe Tongues: for I know none Concern'd, unleſs *Soberneſs and Virtue, the Ornaments of virility*, are Crimes unpardonable.

Par. 71.

The Court Vindicated.

FOR Courtiers to be *Broggers* or Bargain-drivers, is an *Employment too much below Stairs, for that noble Sphere*: but the

the Preſents that we beſtow, for Doing of Courteſies; 'twere *groſs Clownſhip to ſtile them Exactions or Bribes*: only Civil Gratifications, and reciprocal Dues, for Benefits receiv'd: For ſurely when the Fiſh is Caught with their Buſſes, to fry ſome in their own Pan, is not immodeſt nor unreaſonable. In fine, it cannot enter into my noddle, to conceive a Courtier bound, to beg for another; *ſpend his Intereſt*, that ſhould feather his own neaſt: And not ſhare in the Conceſſion.

But to leave theſe little Slips; the by-Corants or coarſe Complements of ſome thin and hungry Stomachs: the Gallant ſtand in too much Dread, of the *Throne of Honour*, to Commit a Rape on Honeſty.

Par. 72.
The Royal Liberties Juſtifiable.

FOR Court Priviledges, that the Royal Waiters, are excepted, from the *beaſtly Hugg*; without leave: 'tis but

1. Decent, and
2. Juſt.

1.

'Twere very undhanſome and low, indeed moſt ugly and Contemptible, that *the Attendants on the Head*, ſhould not be badg'd

badg'd, from the Common Crowd: no more indulg'd and Reſpected in Law, then a Ragman or a Tinker.

2.

In ſtrictneſs of Right, 'tis but fit and ſuting that great Service: for ſhould Majeſty be ſtrip'd of his Servants, without notice; by that Liberty, All by peace-meal, might be catch'd from Him: and ſo left alone in the Vocative Caſe, to ſing his *væ ſoli*: without officers of State, or Common Conveniency.

3.

If ordinary Members by Law., claim theſe Priviledges; much more may the Head, all *Priviledge being the Indulgence of Majeſty.*

Par. 73.

To rectifie the Miſtake.

A Place in the Family Royal, is not altogether a bare Employment, as to Common Subjects: but doubtleſs in *Law of State*, by Influx of Dignity, *an office of Honour*: And ought to be of note and value in Law, otherwiſe *whitehall* were in a ſadder Condition, then Courts at *Weſtminſter* and elſewhere: where the Officers are Priviledged, becauſe the Courts

Courts will not be depriv'd of their Waitings, without notice. Nay, in Law some Advocates and their Clerks too, are free from this *ugly ſurpriſe of Arreſts*: Certainly, much juſter is the Law, to protect the *Houſhold Royal*: the leaſt Diſturbance there, being a miſchief univerſal. For *if the Head be at all Amiſs, the whole Body will inſtantly Complain.*

Neither is the Priviledge claſped ſo faſt, but by Addreſs on good Cauſe, leave will be obtain'd, with a *nulli neg.* that the Law may reach them: the Noble Judge of Appeals in theſe matters, I conceive, may adjudge of the Reaſonableneſs of the Caſe: for weighty Circumſtances, may ſtill ſtave off the ſmartings of a Sute; and continue the Protection, without any offence to Juſtice.

Par. 74.

No ſuſpenſion of Priviledge.

I Have known it, come in Debate in the great Hall; whether the Priviledge out of waiting be then Prorogu'd or ſuſpended; and the Perſon *Attachable without leave*: the Court was near divided, ſome conceiving no notice or leave requiſite: Becauſe then 'tis Holy-day time with

with them; and no Attendance is expected. But the better opinion was clearly for the Priviledge; nothing positively resolv'd, only that the *Priviledge of the Hostel Royal, was no Venice-Glass, dashable against the Walls: And to be broken, when every snuffey Confidence thought fit.*

Strangers why Priviledged.

On *this Reason of State and Prerogative of Honour*, are Embassadours with their Retainers; exempted from a *Capias*: and Protectible by the Lord Chamberlain.

In brief, if the Priviledge fall out Inconvenient, let the Folly hang on the right Shoulders: for I know no Law, that Enjoyns the Complainants, to truck on Trust with Superiours.

Par. 75.

The Priviledge not Dischargeable.

'TIS generally, but very groundlesly conceiv'd, that the Priviledge, *may be wayv'd and null'd too by judicial Consent*: As by entring into a Judgment and the like: And then the Person is laid open, and may be Hors'd up at will: the Lord

Lord Chamberlain hardly offended, he ſeldom Protecting in ſuch Caſes.

2. *Miſpriſion of Prerogative.*

An abuſive Error and moſt Injurious to the *Droit le Roy*, as *W.* 1. terms it, *or Wounding of Prerogative*: for the Servants contrary to Oath and Civil Breeding, to quit their Service: without Requeſt and leave.

3. *No nuller or even wayver of Priviledge, juſtifiable in Law or State.*

1. In Law.

I conceive the Priviledge, neither *nullable, nor even wayvable*; by an Act or Deed whatever: Being *oſſibus Affixa*, as the Civilians ſpeak, *indelibly Affix'd to the Perſon*: that without the Conſent of the Lord Chamberlain, it cannot be put off: like that of the *Prieſthood, which is held not Deveſtible*; no looking back without great ſin: ſickneſs or Infirmity may Excuſe Execution of the Office; but *not a voluntary Wayver.*

2.

By the ordinary Rules of Juſtice: every Common Intereſt keeps entire and whole; without the Act of the owner:

no

no way vulnerable by a third Person. Much more I hope the right of the Sovereign.

3.

The Party is under Bonds, and not at his own Disposal: therefore his *Paravail Acts*, unjustifiable and void in Law.

4.

He that's Bound must obey: and what obedience can he Render, if Disabled: But if Bound and Sworn too, how can he Disoblige himself: without the Releasement of the Superiour, to whom he's tied; without Breach of Covenant and violation of his Oath?

Indented Servants not Contractable.

As by a Case.

A. is obliged to B. to serve him seduloully such a Term: the Obligee can hardly on any shift or Extremity waive the bounden Time: but at his Peril, must hold on and perform his Covenant: Should he be so Dirty as to Contract with another, 'tis void: Because of the Disability or prior Interest, being not free to Indent. And should any be so uncivil as to accept him; 'tis an Abuser of Justice, and Rightble by Action.

Not Relinquiſhable in State.

1.

Can the Ruffeſt Perſon be ſo Doltiſh, ſo lamentably clowniſh: to Conceive it *Handſome, or at all Juſt, for his Majeſty to be evicted of his Servants without leave*: or to Diſpence with a Diſcharge, to incur an Inconvenience; without his Privity.

2.

A fine Comelineſs in Honour, for the Servants to be ſnatch'd up: and the Prince to wait on himſelf.

3.

Once Sworn, 'tis Conceiv'd; the Party can by no Deviſe, of his own Head; for ſelf Ends: Relinquiſh, Diſcharge, or Forfeit his Attendance.

4.

That his Majeſty may chuſe, to allow of any ſuch Diſabling: without his Knowledge and Aſſent.

5.

Both Puniſhable, for Attempting to diſaccommodate his Majeſty: by nulling, or indeed waiving the Priviledge.

No way Diſpriviledgable without Leave.

A Fondneſs or rather Dotiſhneſs of Conceit ſtrongly reigns with ſome, that Outlawry after Judgment will Attach a Courtier: Being then Judicially outed of all *Aulical Indulgence*, or indeed *Protection of Law.*

This is Commonly Receiv'd for Law, and many times Practis'd too: but *Communis Error, non facit Jus*, is a Maxim in Law, and a Canon in Politiques: And therefore Conceiv'd by ſome, a groſs Error, and *Soleciſm of State*: a very uncivil and irregular Practice, and ſtrictly a ſurpriſe without leave; and ſo a Contempt and Puniſhable.

To the Head-Officers, the Deemſters of Priviledge.

Some may be over-noble, and eaſie, in giving leave: others too Importuning, in Requeſting more, then Juſtice or Civility can poſſibly grant.

'Tis thought they may ſtill Protect the Servant, from being Impleaded for any Act, though voluntary and with Conſent: becauſe uncapable to Contract;

and a third Perſon is miſchief'd thereby, which the Law will not ſuffer.

The Relinquiſher deſerves little Protection, for wilfully Intangling Himſelf: however 'tis *not Juſt nor Civil that his Majeſty ſhould be diſſerv'd for anothers Folly.*

Par. 76.

The Sequel of Vulgar Overſights.

THeſe miſtakes, have begot a general Prejudice on Monarchs: and ſome Greeks; in chief the Phyſicians Son, tumbling in muckey Republiques have ſomewhat beſmear'd Monarchy: writing not only coldly, but depravedly thereof: perchance more out of Ignorance then Envy; becauſe they knew no better: But it hath been found true enough, by woful wringings, that *no Laſt will fit an Engliſh Foot, but the Rule by a ſingle Perſon.*

Monarchy the beſt Government.

To ſpeak unbiaſly, 'tis the Exacteſt Platform, and freeſt from Corruption: leaſt inclin'd to twinge the Purſe, or wrench the Conſcience; becauſe not given to Faction and great Parties. In brief, the

the ſpeedieſt Termination of Juſtice: and if Credit may be given to Scripture, *the Pattern of Heaven*: and therefore moſt univerſally receiv'd, by all Mankind.

Par. 77.
The Eaſineſs of living under Princes.

NEither can Monarchy be ſo Burdenous, and ſubject to Groanings, as other ſpecies of Regency: if fierce and chargeable, *'tis ſafer to dread one Tyger than many*: And *leſs ſmoaking the Purſe, to feed one ſpendal then a Multitude.* One or two Counſellors in Phyſick or Law, their Judgments mellow'd by Experience, are more cheap and ſafe than many: *Variety of opinions ſeldom unite, and do but retard the Cure.*

Par. 78.
Princes Reclaimable.

IF a Monarch ſhould chance to be Raw and Riotous, if Advice and Honour cannot; Age muſt on Force reclaim: But a Senatory or Popular State, grows feveriſh and worſe; and ever continues ſo, *to the end of the Chapter*: And when all Medicines are Eſſayed, no Remedy *by Hook*

nor Crook can be found out ; but the Scab totally given over by Counſel and Patience: Death will aſſuredly help the one by Remove, and there's Hopes a better may ſpring up ; and pleaſe every Tooth, but what's *periſh'd with the Phanatick Worm*: But the other is for ever ſuccourleſs, becauſe out of reach of Viciſſitude ; being ſwath'd with Eternity.

Par. 79.

Supremacy Hereditary, more ſafe then Elective.

'TIS ſtifly diſputed by ſome Athenian whifflers, that poſt-pone Monarchy, *to hold a Trencher to a popular Elbow*: whether *Supremes by Deſcent or Choice*, are the apteſt Rulers, and moſt Available for the People: 'tis ſaid by the Railers againſt Succeſſion, that a Prince may happen to be a Minor, unable to govern ; and Guardians will but make Hay, while the Sun Shines: Taking Advantage of the Guardianſhips, *to Chriſten their own Child*, and neglect the publick Good.

Secondly, if at ripe years, the Prince may prove a waſter ; and in Dandling his Affection, deſtroy the People: And therefore the Scepter is beſt beſtow'd *on the Sharpeſt Sword*, or the *Worthieſt*.

Par.

Par. 80.

A ſetled Monarchy; not Damageable by Infancy.

THE Diſputers againſt Election, may rejoyn and Alledge in caſe of Minority; the Council will ſupply the Defect, and be more watchful, *for the Shame will be theirs; if the Prince ſuffer through Slothfulneſs or ſiniſter Conduct.*

An Elective State proves more Heavy and Chargeable; for the Party Elected, to gratifie his Faction muſt impair the Crown, by large Donatives: And to raiſe his own Stock, pull much from the *Domain Royal*: Knowing his Regency is no Entail, but muſt Terminate in him; which is often practis'd, by Elective and Uſurpers, as lately with us by *H.* 4.

Par. 81.

The Monarchy of England *Avowed.*

'TIS ſaid by the Stormers againſt Sovereignty, that the King cannot *Reverſe a Decree, nor Countermand a Judgment at Law*: therefore no Compleat Monarch.

That Judicial Acts, are not Countermandable, 'tis not for want of *Omnipotency*

in the King, but *Poſſibility in the Affair*: for the *King in operation of Law, is ever Preſent in Court*: and hence by the 28 *E.* 1. *En Preſence del Roy* is taken for the Kings Bench; becauſe He is there Virtually, though not Preſentially; therefore cannot be non-ſuit, becauſe not Demandable; in Judgment of Law, being never Abſent: but ſtill Potentially Sitting.

For Inſtance.

A ſtroke within the Reſiancy of the Royal Perſon; unleſs Blood thereupon Enſue: is no Amputation or loſs of the Hand. But in the Judgment-Hall, by the 41 E. 3. 280. 22 E. 3. 13. but the 1 Trin. E. 4. Rot. 3. is in point, the Courts ſitting, for very ſtriking, the Hand muſt be Amputated or Cut off: which I find by that Record was accordingly executed on the ſtriker: Apud le Standard de Cheap: the Reaſon of the ſeverity is render'd; Becauſe in Judgment of State, Majeſty is Preſent: And the Law, the great Preſerver of Peace, and Reverence to the Sovereign; will not away with ſuch an Inſolence.

Now

Now the Lords Juſtices, repreſent the *Sacred Perſon*, *and what's Pronounc'd by them is tacitly Declar'd by him.* And ſo to reverſe or controul, what is Decreed by Himſelf; were Abſurd: and Acts of Juſtice more changeable then the Moon; no Body ever ſafe, and the *Glory of England*, the Law; more uſeleſs then ſcribled Paper.

I'me loth to let my Pen run, in Diſcuſſing this Point; a fit Theam for an *Hubert de Burgo*: for though welted never ſo Candidly, and Warrantably too; by *Studied Reaſon*, Law: I ſhall hardly ſlip the *Cenſure of Dodging*, as a *Clawer of the one*, and an *Abaſer of the other.*

Dotings againſt Prerogatives.

Some baffling over-wiſe Mooters, Canker'd with Schiſm; to *Crop the Crown and beat the Scepter into a Spade:* talk much of *mixt Empire*, which in ſtrictneſs of Law, is *oppoſitum in objecto*, meer Quibbling and Repugnant: making two Supremes, being equally oppoſite, as ſimple and Compound: Fellowing the Prince and Subject, as *Co-Rulers*, or *Partners in Power*: which by the Laws of State are Contradictions moſt Abſurd, being altogether inconſiſtent in one Body, Creating a *Penetra-*

netration of Supremacy, or distinct Regalities; as divers as those of *Naples* and *Denmark*.

Indeed this *equalness of Sceptring, or Coordinateness of Power* doth not only Clip the Wing, but even debase the Sovereign: And make Him more subordinate, and less free then the *Subject*.

To make a gay shew of Potency, but in effect no more Considerable, or indeed Regarded then the King of the Frogs; which made a noise, and some Bluster, but when it appear'd a *meer Apparition or Non-entity of Sovereignty*: the Subjects became more than Familiar, and somewhat Saucy; even leaped upon their King, and instead of obsequious Reverence; afforded him nought but Sleights and Revilings.

That Laws are fram'd by Concurrency, in some Nations, 'tis more out of Discretion; then of strict Right and Necessity: Because the *Subject is best Consuant of himself*, and *ablest to fit his own Condition*. And so a general Convention, royal Bounty and more of Ease, to the Prince; then of Constraint and obligation in Law: neither is this incongruous with sense or Liberty; *for the Prince to be Good to Himself, must on Force be Gracious to the Subject*.

The

The prosperity of the Subject, being *the best Revenue*, and Glory of the Sovereign.

The Primitive Law-givers.

Originally Princes stampt Laws themselves, and alter'd them at Will; for the best *Avail of State*: there's no saying to a Prince, *quare Ita facis*, what do'st thou? being the Auditor alone of Heaven, and so needless of the Allocations, or poor Pidlings of Earth.

Sovereignty Defin'd.

This *Jus Regium*, or *Right of the Scepter*, call'd Prerogative; is a large Field: and according to the word, a *Priviledge of the mightiest Amplitude*: its Bounds and Extents, best prov'd by Records and Constant Practice: However we may safely Conclude, without the Fear of an *Errata*; the Government an harmonious Regency, *omnia in omnibus*, (with the advice of the general Council) absolute: no Homager or Feudatory to any earthly Power, though not a Crum *Arbitrary*; becaufe sweeten'd with the Cadencies of Justice, to wit, the *Goodlineſs of Ariſtocracy*, and the *Frankneſs of Democracy*: Being in all things directed by

Cla-

Clarified Reason, Law; but not a mite Coordinate, Conditional or Depoſable: According to the beguilings of ſome ſeditious Gagglers, but purely ſingle and Independent, without a State-Helper, or Part-owner.

England *the* Commote *of Honour, the Pearl of the Terrene Globe.*

Let's not cry up this Country, nor brag of the other; but magnifie and admire our own mercies, and aſcribe the praiſe unto Deity: *for none under the Sun*, by the 45 *E.*3. *c.*4. *de Talleg. non Concedend.* are *endow'd with that Freedom and ſafety like unto us*: Prerogative and Parliament keeping an equal Pace, going Hand in Hand (according to Fundamentals) they cannot Erre:

Prerogative no Cormorant in Swallowing anothers Right.

As by a Caſe.

By the 1. H. 7. all Liberties, Preheminences, and Regal Franchiſes, were given to him in Tail generally: without any Limitation or ſpecial ſaving.

Whereupon a great Queſtion aroſe, *Whe-*

Whether inferiour Franchiſes and private Liberties were not likewiſe tranſmitted to the King?

Adjudg'd, *Per tout le Coiſe d' Angleterre*, by all the Judges, that every private Right was impliedly ſav'd, by *Proviſoe* of Law, though not particularly excepted: for that *Prerogative can be no wrong Doer.*

For Example.

The Eſtate and Perſons of Ideots and Lunaticks are by Law, Entruſted with the Supreme: ſhould the Sovereign Truſtee Commit the Body or Eſtate of either of them to J. S. to do with them as Abſolutely and Inordinately as he Pleaſes; the Grant were void, becauſe Breach of Truſt; and the Committee puniſhable for any Exorbitant uſage.

In other places, if any (though Poor) are but ſuſpected to be Rich, or but well to Paſs; they ſhall be preſented, with a Basket of Fruit, with *Empty Bags*; which if not return'd Fill'd, the Preſentee muſt certainly Expect the Bow-ſtring, or an harder Cruelty. Thus elſewhere *Ruling is Lording, manuforti by Force*; will is Law, and

and Tyranny Freedom: the Prince when moſt Bountiful but a *Pharoah*, and the *Leigh* though moſt Deſerving; but Egyptian: yet Dalliance of Liberty, Peace and Honour, will not ſtill the Thankleſs; but *Sampſon*-like all muſt be ſhoulder'd down, though they periſh in the Fall.

SECT. XI.

Par. 82.

Kingdoms reſembled to Families, where the Troubleſome are thrown out.

IN a private Family (*the Type of Empire*) is not Rule neceſſary? can it ſtand unleſs bound up by the Ligaments of order? And if the Domeſticks will turn *Ribaws*, Ruffins, and *Damme Boys*; ſleight the orders of the Maſter: Diſmiſſion (in this *Epicycle of Sovereignty*) is the lighteſt Cenſure, that can be Expected.

By parity of Reaſon, in the *publick Family*; if the Erraticks (in Contempt of Maſterſhip) will not lowre, and bow to the ſpiritual Form: not Dictated by the State-

State-Master, the King; not Enacted by the Church: But *assent'd* and pronounc'd too, by their own Consent; *Expulsion and Restraint, are the softest Blows that can be inflicted.*

Outward Worship ordainable by the Church.

In Law, Rituals are *Positivi Juris, matters of humane Make*; the Modification or Rite left wholly to Church Discretion: and *Rites of distinct or divers Forms, do no way stain or impair the Doctrinals.*

Law-maxims the Quintessence of Reason and unquestionable.

By our learned Masters of the Common Law, 'tis not requir'd to assign an Answer; why the Maximes were first ordain'd, and admitted *as the Pillars of the Law, and the Resolves of Reason*: that may not be impeach'd nor impugn'd, by brainless Searchers; that will pick Holes, in a seamless Coat: But ever own'd with silence and veneration; as the *uncontroulable Results of Science* Teste seipso, *Magisterially as Authorities of themselves*; though not provable by Argument, or ocular Conviction: being Compounded beyond logi-

logical Touch, or mathematical Demonſtration; Infallible by the Allowance of the Exquiſit'ſt Adviſings. In brief, of the ſame Powerfulneſs and ſtrength in Law as Statutes; therefore Triable alone, whether Maximes or no, by the Judges; and not *per Pais*, by the Judgment of twelve men.

For Example.

A. hath iſſue two Sons by ſeveral venters, B. and D. B. purchaſes green Acre, and dies without Iſſue: D. ſhall never ſucceed as Heir, being barr'd by a Maxim or Principle in Law.

An harder caſe, with the Clamorous, near a Kin to Barbarity.

Father and Son: and the Son acquires Lands in fee, and dies Brotherleſs, Siſterleſs, and Iſſueleſs too: the Father, that in Law is pluis prochein de ſank, of the immediat'ſt Degree of Blood, the Cauſe of his Being, and ſo the occaſion of the Purchaſe: ſhall not lick his lips, of this Windfal, but the Uncle.

Nay

Nay if the Uncle dies without Entry, the Father ſhall not have the Land at all: in this Caſe too He's rebutted by another Maxim.

Let's invert the Caſe.

Father, Uncle and Son, a Leaſe is made to the Son, Remainder proximo de ſanguine: **here the Father ſhall take by way of Purchaſe.**

Let the Critical'ſt Wits, that can pore into a Mill-ſtone; tell me the Diverſity in Conſcience: in the firſt caſe, what natural or moral Defect, there's in D.; but that He might be ſtep-Heir, and ſlip into the devolved Eſtate: or in the ſecond Caſe, why Collateral Alliance ſhould be preferr'd before the neareſt, proximity of Blood: in the laſt, why the Father ſhall take as Heir, and not in the ſecond caſe: more then that He's diſabled by an Axiom; that's founded on Reaſon, and indiſputable: for *What's not Conſonant with Reaſon, is Repugnant to Law.*

Thus 'tis ſufficient, that the *Poſtulata*'s

or Principles of the Law, the Maxims; are receiv'd as Law, and do no way batter Reason, nor assault the Rule Divine: the like may be apply'd, to *outward Governance* in the Church; the Discipline as well as the Doctrine being fashion'd after the sobereſt Dress of Morality; and equipp'd by the Word of God, ought to live in Peace, from sowre and bubble Disputes: unless with wayward natures we must take a Pride in chopping: Counting it the *Supremeſt of Servitudes, to be Conſtant to ſetled Sobriety.*

SECT. XII.

Par. 83.

Ceremonies Expoſtulated and Aſſerted.

IN Law *Traditio loqui facit Cartam*; *Delivery is the very Eſſence or life of a Deed*; without this Ceremony, in Judgment of Law, no Instrument; only *un Eſcrowet* or scrowl: so in a Feoffement unless executed by livery of Seisin, a nude Circumstance, or bare Formality, *though as ancient as Abraham*; the Conveyance inva-

invalid: for if the Feoffee enter, He's but Tenant at Will, and ouſtable at Pleaſure: the bare Deed, *without the Co-operation of Livery*; will not Create a firm Eſtate of Inheritance, to Him and his Heirs: *only a Poſſeſſion ad placitum, Determinable at Will.*

On this ground in Law; a Charter of Feoffment, or Demiſe for life; by a Copyholder without Livery; is no Forfeiture: becauſe no Alienation.

Stipulations perfected by Formal Acts.

So Tenants *by the Verge*, can neither take nor ſurrender their Eſtates; without the Ceremony of the Rod, *which is ſeiſin in Law.* In ſome Mannors a Straw is us'd, in ſome a Glove: according to the Maxim, *Cuſtom muſt ever be obſerv'd*: the like in ſome places, the ſale of an Horſe, or any other Contract; is Compleated *Per traditionem ſtipulæ*, by the Delivery of a Ruſh. And in the paſſing of theſe Eſtates, if the word Surrender be wanting, being *Vocabulum Artis*, a Term of Law or Word of Art: though the Grant be ſtuff'd thick enow, with all other Conveying Force, 'tis ineffectual and void.

The Customary binding in Law.

The same I take the Law to be; if a Copy-holder were minded, to part with his Right; offering in Court, to pass it by words of Grant, Bargain, Sale, or Gift: no Estate will pass, for as He's ty'd *to one* peculiar Form of Assurance; singular to his Tenure alone: so He's restrain'd to special Words, proper to that Conveyance.

Regularly, a Fee or Freehold, all Corporeal Hereditaments (but in some few Cases) will not pass, without this solemnity: a Ceremony the Law hath enjoyn'd, for the better Caution and security of the Purchasor; in *case the Feoffee or Donee should fail of their Evidence, this solemnity shall supply the Proof of the Gift.*

So in a Grant, *le chose grantus*, the thing granted (but in the Royal Case) will not pass, unless the Terretenant attorn.

To break this Cloud by a Case.

Lord and Tenant, if the Lord grant the Services of his Tenant to A. and after by Deed, bearing a latter Date, grant the same to B. and the Tenant attorn: the Lawyers

yers tell me, the Grant to A. is out of doors: should the Tenant afterwards attorn, 'twill not a rush mend the Title of A.

Was the Israelitish Seisin by the Shooe, unseemly because Customary and requir'd by Law? or did *Boaz* conceive his Purchase not strong enough, unless *Elimelech*'s Attorney did execute the same? was there any Impertinency or undecency in either? Is the Royal Charity on Maundy Thursday (*imitating the lowliness of our Saviour*) an ostentous Humility, not becoming the Majesty of so great a Prince? if not; why stagger then some taunting Make-bates, at harmless Ceremonies; which banquet the Soul, and grace Devotion.

Par. 84.

Why more Agriev'd at Ceremony then Common Civility.

LET them render a Reason, why white Habits are more frightful and noysom then Black? or Cassocks more unseemly then dragling Cloaks: why Lawn-sleeves more Absurd, then Collars of Essences; or Corner Caps with fur'd

Robes ; or gold Chains with ſcarlet Gowns : both worn by Magiſtrates of Honour.

Is the notifying Induction, by taking the Keys of the Church, and ringing of the Bells, Boy-like? though a Ceremony enjoyn'd by Law. Is the Pall, Surplice, or Hood, more ſuperſtitious and ſilly, then the Lawyers, Tippet, or Coif? both ſurely by way of Decency, as Robes of Diſtinction, and Ornaments of Gravity.

Was the Counteſs of *Godina*'s Riding, as plain as ever ſhe was born, Wild, or Wanton? Is the walking bare-Headed to Governours, in Quadrangles Idolatrous? or a Ceremony any way Petulant, and unbecoming youth? by ſome Statutes, *to empty Courts and bare Walls* (which I have often ſeen) unſightly, for Freſhmen, and *juniour* ſtanding?

In brief, is the Curfew *Bell* inſtituted originally *by notion of State*; and ſtill continued in Diſcretion, as of civil uſe; as childiſh as Rattles or Cymbols?

Why then this filthy ſmoke, this ſhameleſs Pother, about Atomes or meer nothings; or more truly neceſſary Duties? Pray God this Fierceneſs prove not the Prologue, of their Revolving to the

Scarlet

Scarlet Hat; againſt whom our bleſſed Infatuates, pretend the forked Arrow of their molten zeal?

Par. 85.

Homage juſtifyable in State and Breeding.

WHat will our Church Squablers, ſay of Manhood; a Service conſiſting of many Ceremonial and Strange Poſtures: is the Performance meerly Foppiſh, and Paſtime for Owls? which if learned Lawyers may be believ'd, (and *Every one muſt be credited in his Art*) is of admirable ſignificancy, and neceſſity in Law: which our careful Anceſtors ordain'd, under ſhadows, the better to illuſtrate, and retain ſubſtances.

What is the Tenure by *Cornage*, an hanging-ſleeve Hooting, though ordain'd for the Defence of the Realm? what will ſome Ramblers think of *Feaultie*? when the Tenant in the obſequiouſeſt manner, ſhall ſwear Fidelity to his Lord, with *Sicome moy aide Dieu & ſes Saints*, ſo help me God and his Saints: is this Dotage? which a Text Advocatei, adviſes Fee-Lords not to neglect: it being a ſufficient Seiſin of all Services.

Par. 86.

Reaſons apparent to the Blindeſt.

TO argue *per notiora*, by eaſie ſimilies; Trunck Breeches or Trowſes, and open or cloſe kneed Hoſe; ſo a Ruff or a Cravat; with a Collar Band or a large one with a narrow or broad Hem; Plain or Lac'd: the like of an Hat or Mounteer Cap; with a Waſt Belt or Shoulder: All of them in nature are Indifferent; the one equally as Decent and Rich as the other: But if the *Arbiter of Modes, the Court*; affect one more then the other, the Indifferency is Decided: then one is become Handſomer then the other, becauſe more Modiſh: being worn by Sophies of State, whom in Indifferency, *Regis ad exemplum*; 'tis our Duty in manners, to imitate and obey: The like in Church Diſcipline, the peeviſh muſt content themſelves; with the *Fiat, and Injunction of their Betters*: throw by all Dunſtical dogged Humours, and comply with the preſent Form.

Are Garments that cover our nakedneſs, and defend us from the Rudeneſs of the Air, the leſs Decent and ſerviceable for modeſt Trimmings? is Cloth or Serge ſpoil'd,

ſpoil'd, leſs uſeful, if Guarded for ſome: or not Graceful, if Gymp'd for others of better Rank, and coſtly Fring'd? the cloth continues the ſame, doubtleſs much better, being decently ſet off; unleſs flovinglineſs and fluttery; are more ſweet and ſeemly, then neatneſs and ſober Attire: After the ſame Comparative; how can the Doctrine be vitiated with polite Ceremony; purl'd by Order. But *with unſhorn ſouls of an high nap, All's Fantaſtical and ſuperſtitious, that's not ſlutter'd and ſlubber'd with unholy Teeviſhneſs.*

Thus Ceremony is the very ſoul of Order, and *Order the Governeſs of Humanity*: for let but Order turn out, and urbanity diſſolves.

Par. 87.

The lawfulneſs of uſeful Ceremonies.

AS to Divinity: we muſt not conceive them *in their own natures ſimply unlawful*: for if ſo, God would not have ordain'd them under the Law: And under the Goſpel I find none Prohibited: but ſuch as are *Enthralling, to exchange the Liberty of Grace, for the Tyranny of the Law*: The Apoſtle indeed doth condemn Circumciſion, Jewiſh obſervings of Days, Months,

Par. 86.

Reaſons apparent to the Blindeſt.

TO argue *per notiora*, by eaſie ſimilies; Trunck Breeches or Trowſes, and open or cloſe kneed Hoſe; ſo a Ruff or a Cravat; with a Collar Band or a large one with a narrow or broad Hem; Plain or Lac'd: the like of an Hat or Mounteer Cap; with a Waſt Belt or Shoulder: All of them in nature are Indifferent; the one equally as Decent and Rich as the other: But if the *Arbiter of Modes, the Court*; affect one more then the other, the Indifferency is Decided: then one is become Handſomer then the other, becauſe more Modiſh: being worn by Sophies of State, whom in Indifferency, *Regis ad exemplum*; 'tis our Duty in manners, to imitate and obey: The like in Church Diſcipline, the peeviſh muſt content themſelves; with the *Fiat, and Injunction of their Betters*: throw by all Dunſtical dogged Humours, and comply with the preſent Form.

Are Garments that cover our nakedneſs, and defend us from the Rudeneſs of the Air, the leſs Decent and ſerviceable for modeſt Trimmings? is Cloth or Serge ſpoil'd,

ſpoil'd, leſs uſeful, if Guarded for ſome: or not Graceful, if Gymp'd for others of better Rank, and coſtly Fring'd: the cloth continues the ſame, doubtleſs much better, being decently ſet off; unleſs flovinglineſs and fluttery; are more ſweet and ſeemly, then neatneſs and ſober Attire: After the ſame Comparative; how can the Doctrine be vitiated with polite Ceremony; purl'd by Order. But *with unſhorn ſouls of an high nap, All's Fantaſtical and ſuperſtitious, that's not ſlutter'd and ſlubber'd with unholy Teeviſhneſs.*

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Months, Times, and years; which are no leſs then ſuperſtitious, becauſe unprofitable: However we are bound by the Goſpel, to retain thoſe, that Conduce to *Edification, Order, and outward Decency in the Church.* Otherwiſe the ſame Apoſtle would never have commended the Corinthians for their Care, in keeping the Ordinances, which he deliver'd to them: which Canons were (after the opinion of the beſt Doctors) concerning the outward Worſhip; not about the Eſſentials, as Faith and Repentance, but reverent Behaviour and Gravity, the Adjuncts of Religion.

'Tis true, our Saviour reproves the Samaritane, ſaying, that He muſt be Worſhipped *in Spirit and Truth*, and no more Idolatrouſly, after the accuſtomed Samaritan Worſhip: But in Truth *not in Types and Shadows*, but *in Chriſt* the ſubſtance: And no longer in Reſpect of Promiſes and Predictions, which were fulfill'd by the Coming of Chriſt: Thus *Spirit and Truth*, the often *wheaſings of our Diſſenters*, I conceive very clearly, are not oppoſed to Ceremonies in General; only to *legal ones* which were Typical: and to ceaſe on the full Manifeſtation of our Saviour.

Let ſome *Mouchers from the Church of Eng-*

England, resolve us, what more Damage or Hurt they can be to Gods Service now, then when God expresly enjoyned them, if the Heart be Righteous? for *unto the pure all things are pure.* But *Momus* when he could not spy any Blemish in the Picture of *Venus*, pick'd a quarrel with the Slipper.

Par. 88.

Discipline fram'd by Princes, Allowable by Law.

A Christian Prince is out of all Doubt in Right of Divinity; *Episcopus extra Ecclesiam*, the *rightful Overseer* (*as to Externals*) *and Orderer of Ecclesiastical Concernments*: though no Bishop in the Church, to exercise the Priestly Function, without a Call. King *Uzziah might not burn Incense, nor offer Sacrifice.* He may order and Command *the Persons of the Clergy: and enjoyn them their Task*: so King *Jehosaphat* commanded the Levites and Priests to teach the Law, in the Cities of *Judah.*

As Princes have Power, over *outward Concerns*; so 'tis their *Devoir*, and ought to be their principal Care, *to promote the Service of God*: They must not act against Gods Law, nor reign with a loose Hand, that

that may be injurious to his Rites, or Worſhip: They're bound to down with *all falſe Worſhip*, to Prohibit and Reſiſt all Attempts; that have but the leaſt Tincture of Tendency thereunto, in ſecuring the Church, from being a *Puppey-ſlave to a Foreigner*: So did *Hezekiah*, *Joſiah*, and all other good Kings of *Judah*.

Par. 89.

Sovereigns are Erectors and Judges of Ceremony.

THus after the Warrant in Divinity: the King in Law is *Cenſor Morum*, the *Modeler and Controuler of Diſcipline*: *Beneplacito Regis quoad Ritus, tanquam legi obtemperandum eſt*: His Majeſties *Mandamus quoad* Ceremonials is Law: and in this ſenſe, *An Order of State hath been Adjudg'd Equipollent, to an Act of Parliament.*

Therefore if *Lex Loquens the Oral Law*, or Supreme in this Caſe, delegate his Power to the Church; for theſe *outward Miniſtrations*, 'tis good and obliging: if quadrated by the Apoſtles Rule, in Decency and Order: who but a Miſcreant, will bend

bend his Brow, to deprave and Disobey.

Hence may Copes and Bowing, *not to, but towards the Altar*, and the like, be Binding; becauſe Decent and Harmleſs, if the Church enjoyn it: though I confeſs I am not much for either; but if the Church adjudge it fit, then my Indifferency is circumſcrib'd: I muſt obey in obedience to the Church, as matter of Decency. That 'tis bad, becauſe a *Dalilah or Fondling at Rome*, is Lobſter Logick: Papiſts eat and drink, therefore we muſt padlock our mouths, and throw the Creature to the Dunghil. Nay, Indian-like, even abandon Heaven, becauſe they profeſs to land at that Port; as the *Haven of Souls*: I'm as reſolvedly againſt the *Fucuſſes of Rome*, as *Ridley* or *Cranmer*; and ſhall venture more, *then the Digging up my Bones*, for the Reformed Truth.

In fine, if any Bracks in the Diſcipline, *to the Blemiſhment of Chriſts Church*: 'twere but mannerly zeal *for the Taunters againſt Decency*, to diſcover them; in order to be handſomely Dern'd up and Amended: without Renting the whole Piece.

SECT.

SECT. XIII.

Par. 90.

The Pilot of the Soul, for his careful ſteerage: is worthy of Double Honour.

BY the Canon Law, *an Office requires a Benefit*: a Poſition in nature, for each member to aid and requite the other: moſt Abſurd then for the *Caterers of the Soul*, to be at great charge, and baulk all worldly Hits, to live otherwiſe; to fit themſelves, to adminiſter Spiritual Food: and be grudg'd for their Caterſhip, a *Carnival Return*. 'Tis but Common Barter, nothing of Bounty: *the bruted miſers of the world*, Lawyers and Phyſicians; the one to friſk and capeer the Body, the other to ravel and tangle the Eſtate; are *greas'd with fat Thanks*: But the *manciple of the Soul*, for his Guidage and Paſturing of the Spirit; muſt fare hard, and nibble upon a Rock.

But how can their Revenues, be ravin'd

vin'd or repin'd at, without Sacriledge or the groſſeſt Impiety? their Demeans (moſt *Hippo's* or poor Pittances and empty Casks) being as undoubtedly firm in Law; as any lay Inheritance.

The Cleronomy not ſaleable.

Conceſſum Templo, Conceſſum Cœlo; a Conceſſion to the Church is a Grant to Heaven, and ſo unalienable: ſhould then this Cut-throat Sacriledge be ſuffer'd, to out-riot the *Goths* and *Vandals*, and have its will: where ſhall Eſcheat the ſpoil? to the *Corporation Royal*, the King: no; he ſcorns to handle Church Rapine; and 1 *Jac.* backs his holy Worthineſs, to Continue the Intent of the Founders; for the Lands to demur in ſucceſſion, for the maintenance of Religion. It being the *Dowre of Heaven*, lent only for the uſe and ſupport of the Church: no living mans Gift, and in none now alive; that can pretend to a Reverter or Re-aſſumption: ſo that ſhould ſo *bloody a Blow be given to Monarchy*; as the order taken off: the holy Patrimony,

mony, as the Lawyers ſay, muſt reſt in *Abeiance*, in ſuſpence or Intendment of Law.

No Alienation intendable by Law.

I conceive *Gallio* and *Tenants Paravail*, will not meddle with the Spiritual Commodation, *de queux, ils nont pas Cognizance*, without the temporal Road; being *directum Dominium*, an independent Seigniory, and the *ſimple Fief*, or pure Inheritance, properly in none; but with the Lawyers in *nubibus*, in the Contemplation, or Expectancy of Law.

The Prudence of the Law, hath inveſted the Glebe-Holders, but with a *qualified Eſtate*; in prevention of a Diſcontinuance, to bar the ſucceſſor: Hence is prohibited the Benefit of a Deads-year; that the ſucceeding Incumbent, might find *Temporal Bread for his Spiritual*: in brief in Law, Regularly for *Advantage, to benefit the Church, the Parſon hath a Conditional Fee: for prejudice but an eſtate for Life.*

Par.

Par. 91.

The Right of Tithes manifeſtly proved.

FOR Tithes, whether *Jure Divino*, as to the Quotity or tenth Part, it matters not: ſince as *Maintenance*, by all Laws 'tis agreed to be of *Divine Right*: And purſuant to the Articles of nature, which binds us (as Tenants by ſufference) to honour Diety, with all worldly Enjoyments: the Decimation then or Tenth, which circumſpect *Agat.* ſtiles *Decimæ Debitæ*, that we afford the Paſtour of the Soul; is *no will-offering or Pious Benevolence, but payable as a Debt, due to Heaven*: to ſpeak Lawyer-like as a *Fee-Farm*, or *Reſervation Divine, in Token of whom we Claim.*

The Proto-Rent Eccleſiaſtical.

We read that *Cain* and *Abel* brought their Offerings, which certainly was prompted to them, either by *parental Practiſe*, or *natural Light*: now God was not offended at the one becauſe He offered; but becauſe his *obvention was not ſeaſoned with Faith*; which made the other's more Acceptable.

The offerings of the Patriarchs, muſt

needs proceed from Divine Command, either impliedly directed by *Gods Candle*, the light of nature; or expresly from the Constant Tradition, of the first universal Parent. Otherwise we may Conceive them grosly guilty of Will-worship.

The Firstlings due to the Heavenly Steward.

Since we cannot present our first-Fruits to the right Land-lord: we must tender it to his Seneschal and Proxey; the terrestrial Feoffee for the Cure of Souls: And the *Glory of the other world, being not Revealable, but by the Hallowed mouths of Mortals*: and they unable to live, without partaking of the lay-Blessing; a Provision in necessity of nature is most due, and none so *Covenable*, apt and Agreeable to Scripture, as the ancient Salary, and yearly Income, approved and setled by Law.

Were I as Hotspur'd and Heathenish, as some Gablers churling against Tythes; I would out with my Tongue; and off with my Hand too, before I would substract them. In Law Denial of Rent is a Disseisin, and non-Attendance to pay it, is *a Denial in Law, and an actual Disseisin*: In some Cases Forfeiture, in most good cause of Re-entry. All Blessings are properly the *Demeans of Hea-*

Heaven, and we at moſt but *Feudaries al volunt*, Tenants at will: Let the mutterers then againſt Tythes, beware the chief Lord; meet not the ſame meaſure; by ſeizing the whole: on non-payment of his Due, to his Embaſſadour on Earth.

Par. 92.

Tithes not Alienable becauſe a Divine Property.

SInce our *Diſſenting Conſciences*, are generally for the ſtarving of the Church: *To throw down Religion and ſet up Atheiſm.* Whether Tithes may *de jure* be alienated, and the Clergy turn'd to Pentioners and Alms-men: will be worth a Diſcuſſing.

1.

I'me full in the negative: firſt by the *uſual Laws of Civil Barter* among men, nothing will Rightfully paſs from the true owner: *without his Privity and Conſent.*

2.

We muſt not then deal, more Injuriouſly and Impudently with God; to pull from Him: and tranſfer it to another, wirhout his leave and Approbation.

3.

For his Approving and good will, to any motion of that Horridneſs, we muſt not expect a voice from Heaven, but ſeek

his Word for the ſame. And there we ſhall not find a ſyllable, of his willingneſs of parting *with his Eſtate*: But the contrary expreſly, Prohibited by *Joſephs* taking a more ſpecial Care; *That the Lands of the Prieſts ſhould be Hallowed, and particularly exempted from Sale.*

Par. 93.
Whether Due Jure Divino.

I Conceive Tithes not only Lawful and Due, as all other Proprieties, confirm'd and Eſtabliſhed by Law: But likewiſe Juſt and moſt Indiſpenſable, by the *Right of Divine Precept, and Practiſe of holy men*: which in all Ages ever made a Conſcience, to pay them.

Payable under the Law.

We find that God had a Reſpect, and was ſomewhat more *Favourable*, to the *younger Brother and his offering*: nor do we read, that God by any Act, did ever give up or part with his Right to Tithes: no ſurrender or Alienation, viſible in the Caſe.

Implead-

Impleadable under the Goſpel.

Under the Goſpel, Chriſt and his Apoſtles, are ſo far from Diſ-owning, or non-claiming them: That we find them expreſly Requir'd, *Matth.* 23. 23. And in the ſame Evangeliſt, that Chriſt by that Precept, of *firſt reconcile thy ſelf to thy Brother, then come and offer thy Gift*: that he Approves of the Payment thereof.

Neceſſary Purveyings are *Jure Divino.*

Tithes are moſt neceſſary ones for the maintenance of Gods Church:

Therefore Tithes *Jure Divino.*

Par. 94.

A Titheable Preſident.

I Find *Abraham* very Punctual in Paying of Tithes, even of his uncertain Revenue, *his very ſpoils*: now he did this *by Command*, and ſo a Pattern to us; otherwiſe we may tax him of Will-worſhip: of which the Scripture is altogether ſilent.

Par. 95.

Compulsory Maintenance better then Voluntary.

'TIS mis-objected, that Contributions were Better: leaving every one to his *Mouldiness of Spirit*, to pay what he lists.

A swift way to turn the Clergy, into that hainous and abominable Sin of Flattery: To have the Rich in Admiration, to be amply Allow'd; but the Poor in scorn, *to feed upon Husks*; because there's no Hopes of Reward.

Why Contributions should not be still Continued, which was the *old Livelihood*; before the Church was Inducted into Tithes: is demanded by some.

As by a Case.

J. S. hath Red-acre in Possession with a Right to Black-Acre; but no seisin: Doth he by the actual Enjoyment of the one, forfeit his Interest to the other.

Par.

Par. 96.
Why Demandable.

IN fine, the Reaſon of Tithes, was the Inſtructing of the People, in the Service of God: with Continual Interceſſions, for their chiefeſt Bleſſing; which muſt continue to the end of the world; and ſo then on neceſſity, as well as Precept; muſt Tithes be perpetually Paid, and freed from Alienation: otherwiſe the Service of God muſt ceaſe, and all precious ſouls dearly bought by Chriſt; be Expos'd to Damnation.

Par. 97.
Due by the Law of Reaſon.

BY the *Injunctions of Reaſon*, can Civility be ſo beetle-headed, ſo very a Dolt; as to dream that Schollars, *ex Debito*, or of Courſe, *by bounden tie of Conſcience*: are oblig'd to be up early and late, Threſhing at Study; enjoy no more Eaſe, then Hedgers and Ditchers; but *ſtill Carking to Purvey, and lay up for the Soul*: waſting themſelves, and parting with their *Stouge of Oyl, as ſhining Lamps, to lighten the Laity to Heaven*: And with

the Apoſtle, *The Workman not worthy of meat.*

Par. 98.

The People Unedified, ſo no Pay due.

IF Tithes due and well deſerv'd: how comes the Church to be thus Rent aſunder, over-ſpread with Schiſm and Hereſie: were the People better Taught, more Godlineſs and Unity would Shine: *Popery depreſs'd, and the Orthodox on the Top of the Hill.*

The Eſtovers of the Church, why Payable.

This is a bungling Cavil, and not worth a Reply: Tithes were paid to the Levites, becauſe ſet apart to give Attendance, at the Altar: ſo the Clergy now Claim Tithes, becauſe ſeparated to the Goſpel: And not on the Account of ſucceſs. *One may Plant, and the other Water; but Heaven alone muſt give the Encreaſe.*

The *Brachium ſeculare* muſt inſtruct, for *Mucro Eccleſiæ* is no more Dreaded, then a Pot-gun: the Clergy may Preach, and labour their Hearts out, for the *Spiritual Peace*: to ſtubborn Hearers, that will ſtop their

their ears; or if Inſtructed, will not Practiſe. How can our *good Spiriters*, the Spurners of the Clergy be edified? that Routouſly trivant after *untemper'd Morter*; and refuſe the Church.

The Juſtneſs of the Law to the Church.

Not to belye the Common Law, it bears a juſt tenderneſs to the Church: 'tis true a lay-man may be diſcharg'd of Tithes, by Grant or Compoſition; but not by Preſcription: that is, the Law will not ſuffer, to preſcribe, *in non Decimando*, in Exoneration or Diſcharge of Tythes; only for the *modus*, the ſame with the Canon Law, where a Preſcription is not Allowable: And the *Decimæ Conſuetæ*, or the manner of Decimation, ſo it amount to a Muneration, or Competent Portion; doth not enervate or weaken, the Decimable Right: Payment of a ſum in half Crowns or Shillings will not vary or prejudice the Duty; in Diſcharge of Predial, or mixt Tenths.

Par.

Par. 99.

The Decimal Right, formerly Appendant to the Spiritual Conuſans.

ANciently, if Tithes were ſubſtracted: 'twas ſuable in Court Chriſtian: But then if the *Right of Tithes* had come in queſtion, by *w.* 2. 'Twas Triable only at Common Law. For Penſions they may ſue in the Spiritual Court; but if they be *Preſcriptible*, by the 13 *E.* 1. it muſt on *Fine-force*, be claim'd at Common Law.

After the *Norman* the firſt Law in behalf of Tithes was the 18 *E.* 1. *Art. ſup. ch.* a *Declaratory of the Common Law*, with a Ratifying of the 9 *E.* 2. under the *Royal Aſſurance.*

18 *E.* 3. by *ſc. fac.* out of the chief Court, *as old as the Nation*: the Clergy were *ſub-pœna'd* to render their Dues there: this was Conceiv'd an Encroachment on the Church: ſo Remedied with a *ſalvo jure Regio*, or ſpecial ſaving to *Regal Rights.*

2 *R.* 2. Church-men were Decimated by ſecular Courts: This was likewiſe Redreſs'd, without demonſtratively Proving it, to be a *Lay-Chattel.*

15 *E.* 3. 'twas Declar'd, that Purſuing of

of Tithes, of Right did properly, pertain to the ſpiritual Court: Thus in all Ages, by the 14 *E.* 3. 25 *E.* 3. 6 *R.* 2. 7 *R.* 2. 2 *H.* 4. and ſeveral other Modern Laws: the Church was reliev'd, and the Maintenance preſerv'd.

For Bleſſings Renovant, Tithes moſt Due.

For *Winchelſies* Canon, 'tis by ſome queſtion'd; but for growing Profits, I meet with no Doubtings, at all among Lawyers: Tithes in Law are not nakedly a *Lay Profit apprender*, barely a Rent Charge, or Canonical Allowance: But an Eccleſiaſtical Inheritage, the Fee ſure more then Poſitive, without doubt Divine: a Proviſional Due, Recoverable under the Goſpel, as well as the Law; as of Divine Right.

The Moral Law is *Jure Divino* under the Goſpel.

Tithes are of the Moral Law.

Therefore Tithes *Jure Divino* under the Goſpel.

By the National Law, this *quota Pars*, as the 13 *E.* 1. calls it, is uſually defin'd, a *Church Inheritance, Collateral to the Eſtate of the Land*: and therefore not Extinguiſhable by Feoffment.

For

For Example.

If a Mannor be alien'd by Fine, the ſolemn'ſt inſtrument in Law; this ſhall not Extinguiſh Tithes: the Alienee muſt to Confeſſion, with the Parſon for his titheable Intereſt.

Par. 100.

None Indecimable or Tithe-free.

NEither are Tithes, extinct by unity of Poſſeſſion; as other Charges iſſuing out of Lands, are ſubject unto: Therefore,

If a Parſon, purchaſe the Mannor of Dale, *of which He's Incumbent: by this Acqueſt and unity of ſeiſin, the Land (by Act of Law) is become non-Decimable: But if the Parſon infeoff or Leaſe out his Parſonage to* A. *He ſhall have Tithes, againſt his own Feoffee or Leſſee: for Tithes were not diſcharg'd, only uncharg'd or ſuſpended.*

At Common Law, put the caſe, that A. doth demiſe his Rectory to B. Rendring Rent; in lieu and ſatisfaction of all Demands; as well Spi-

Spiritual as Temporal: 'Tis quæried whether now Titheable.

Though the word Demand be cutting in Law, indeed very Chain-shot in most cases, of the mightiest extent and operation: yet I conceive, it shall not exonerate or acquit, the Demisee of Tithes: being more then common Reserves of Rent, *Duties inevitably due, as Debentures to the Diety.*

Let the Bargain be more closely worded.

As a Demise of Land cum Proficuis, , **with all Perquisites and Avails:** whether now due.

I conceive the ampleſt Grant, without particularly nam'd, will not pass Tithes; becauſe *Spiritual Duties, and Collateral to the Estate of the Land.* By Law a *Tribute Parochial, for the support of Religion*; for *which the Parson Imparsonee, or Purveyor of the Soul*, may take of Common Right, without any Customary or Civil Provision: the Duty lying in *Prender*, as well as *Render*. For can the Judicious imagine, that after we are spiritually treated; God intended that his Suffragan, should with

with Cap in Hand, ſcrape to Miſter, or Gadfer for his Wages: and be foxtail'd, without even *Romeſcot*, or a penny for his Balm. Like the labouring Bee, to fill the Hive of the ſoul with Honey; and not to be vouch-ſaf'd the Wax for his Candle, but to be even ſmother'd for his Pains.

Par. 101.

No Duty, no Pay.

THis clerical Eſtate, or divine Exhibition, though of *abſolute Tenure and ſacredneſs in Law*; yet Abuſable: the Incumbency conſiſting chiefly in *Feaſance*, or active ſervices: for ſhould the Curate, play the beſtial Churle, refuſing *Celebrare Divina*, to execute his Curacy. *Non-ſolvence of his Dues, on Courſe is Abſolvable in Law and Nature.* Like an Annuity at Common Law, granted *pro Conſilio impendendo*, and the Grantee refuſes to give Counſel; the Annuity ceaſes. For that a Benefit ought to be mutual, otherwiſe as a nude Compact, it binds no faſter then a Girdle without a Buckle. This under ſubmiſ-

ſion

ſion is thought by many grand Lawyers, the Statute of nature: *a Doctrinal inſtincted, and reveal'd by Reaſon.*

So many leaves has been ſpent on this Point: And the 27 and 32 of *H.* 8. particularly the 2 *E.* 6. hath been ſo good a Proteſtant, to ſettle the Payment in Peace: that to warble more on this note, were as uſeleſs now as an Attempt, to drain or check the Sea.

SECT. XIV.

Par. 102.

To be Incumbent of Livings is neither Gluttonous nor Greedy.

PLuralities much annoys the Squemiſh, as the *Spawners of Idleneſs*; the Bane of Virtue: Batlers overfed prove Cromming Punchey's or meer Belly-Gods and Trivants in their Function. *Infiniteneſs is not favour'd in Law, as exceſſive Damage, Diſtreſs infinite.*

An apſey ſtammer, will eſcape this leaſh; Wiſdom ſurely was not nodding and Dormant, in the 21 *H.* 8. nor in the leaſt ſlumber

ſlumber or Drowſineſs; when this Duplicate or Faculty of Grace was ordain'd: In Law *the worthineſs of Acts, are meaſur'd by the object, about which they are Converſant; or by the Tendency unto the End, for which they are fram'd:* Now the object, was Tranſcendency of Parts; the end, *Chaplets of Honour*, for indefatigable Merit.

But ſupernumerary Cures thwarts the Canons of *Lateran:* Gawdies that repaſt not the Body, but ſurfeit the mind: tallow indeed the Sides, but breaks the Back of Reaſon: a Rudeneſs in Breeding beyond the Lording of the Popes *tot quot*, or wadling Gutlings; for ſome overgrown Paunches, their Heads uſually lank and homely furniſh'd: to gourmandiſe and engroſs the whole Table, leaving no Room for many, whoſe Parts intitle them; to be Gueſts at the *Holy Battles*: Beſides non-Reſidence muſt needs march in, it being miraculous, to recubate and ſupply two Cures, without ubiquity.

The ſquintings of Envy not Regardable.

Diſ-foreſting and Scarcity of Wood, will neither Cool, nor Chill thickſcul malice: Staves will be found to ſtrike Virtue.

We agree the Statute, to be *ſtricti Juris*,

Juris, taken very closely against *non-Residents*, *Faculty-Favours*, and *Gulliguts*: and therefore if a Bishop be translated to an Arch-bishop, holding both Dignities: or a Baron created an Earl, although both Honours be consolidated in one Person: yet shall they not qualifie more, then what an Arch-bishop or an Earl singly might have done. And the 21 of *H.* 8. with some Exceptions, confirm'd the *Lateran* Canon: However when Popery was here in Pomp, the King and others too, might have dispens'd with it: for *stricto Jure*, at Common Law, there was no Cession, the first Benefice not void, voidable only by the *Lateran* order: As the Law of those Times, of a secular Priest; if he had taken Wife, leaving Issue and died: the Issue Inheritable, the Coverture being not void, voidable only by Divorce.

Par. 103.

Priviledges of Favour.

A Noblemans Chaplain may be doubly Benefic'd with Cure, without suing out any special License or Dispensation: But I find it doubted by the 14

Eliz. whether the Law Spiritual will allow of the ſame.

If a Nobleman by his Letters Teſtimonial qualifie ſix, when in Right of Law, He ſhould have but three: the three firſt Promoted ſhall only ſtand, and the reſt put by: otherwiſe the Clergy, that of all men ſhould not be Raking and Covetous, but rather Liberal and Self-denying, would be (near as bad las Simoniſts) Monopoliſts, and Engroſſers: And the Intent of this Indulging Law, Abus'd and Defrauded.

But I think were the matter well examin'd by the Quærent, the Plaint would ceaſe, without any more ado: the Grapes are only ſowre, becauſe not within the Pull, of ſome pedantical Clutches.

Indulgences to Dignity.

May not Plenarty of virtue, the Top-Pregnants of the *George and Garter*, for goodly Excellencies; claim by geometrical Juſtice, the Priority of Choice, with *Benjamin*'s meſs? nay Plurals and Exceedings, with a Trialty; if *Major Domo*, or Majeſty think fit? Beſides, ſhould this Hill be taken down, and laid flat;

flat: Nobility would find ſome ſmart in the Tumble; for Qualifications, *Priviledges of Honour*, inherent to Noblemen; muſt fall to the ground, incorporate with the Duſt, and be ſeen no more: thus their ſtutting to level this Mount, will defraud the Church of its *Magnetiſm* or fair Allurements, to incourage the climing Graduates. And alſo the *Upper Nobles*, of their Statutal Right, to gratifie their Chaplains, and promote elegant Deſert.

SECT. XV.

Par. 104.

A Curious Conſcience Condemn'd.

ON the ſerioueſt Debate within my ſelf, with the Aid of the ſtricteſt ſcrutiny in Policy; the narroweſt ſearch, into the ſacred Tomes: I cannot find, but the *Counſellor of the Soul*, *Conſcience*; may be as well over *Touchey*, as *Tender*: And therefore by the Commands of both, ought to be modell'd after *the Rules of State*; that is, *Law*.

Positive Law miſlik'd and Maunder'd at, becauſe miſ-underſtood.

That the Eldeſt Son at Common Law, ſhould ſweep ſtakes; or go away with all: And though he die, living the Father, his Iſſue by the *Fiction of Repreſentation*; ſtill to be Entitled to All. And if the Parent chance to pop away, without a legal Setting out, or Diſpoſing of the Fortune: Then for the young *Gallanter*, as ſome call him, to flant and tear with a witneſs; turn the Brothers and Siſters a Begging, and ſett the whole Covey: And that in Conſcience is Hard to ſome; unreaſonable with others: *Nature being an impartial Carver to All*: a Meliority then, that is, the primer Choice, or better Part; to the eldeſt were fair and ſufficient. But for one, uſually a *Lurdane*, or the leaſt worthy; to loll and take up the whole Chariot; and guzzle alone: And the reſt to foot it and ſtarve. To many Diſcernments, is an heavier Doom, then to the Mines or Gallies; a very *Garlick Law*, unknown to the very Blacks: contrary to that of old, which was but the *bigger Stake, or fatter Collup*; and not for one *hovering Greedigut, or gutling Hobler*; to Crom and Cubboard the whole

whole Belly-Timber, keep Spoon and Broth and All to Himſelf: a very ſodden Cuſtom, and not becoming Humane nature.

Par. 105.

The Law juſtified, and the Maunderer check'd and Refuted.

TO couching Gutlers, lobbing in the Chimney Corner; that would gladly Catch Fiſh, without wetting the Foot; with the ſnout continually in the Porridge Pot; this Noble Law, borrowed from the *Saxon*, (as *per ch. F. B.* in 1 & 2 of *Ph.* and *M.*) is thought ſmoothleſs and over-ſmart: But with the braver Allay, moſt Politick and Rare; *for the Preſervation of Families, the Quickning of Induſtry; but chiefly for the Flouriſhing of Monarchy.*

The Intirety or whole Diſh queſtion'd by the wiſeſt.

Neither is this the Cloggy Maunderings of ſome Mopſey Heads, but the Doubting of Cauſidical ones, *Judgments of the firſt Rate*; as not ſtrictly *maintainable by the Law of Reaſon, though Reaſonable*:

a very nice Reaſoning, which doth not attach the Reaſonableneſs of the Cuſtom: For ſhould the Fortune be *Hut-ſpotted*, or ſlic'd into Driblets; *the whole Claſs of Honour*, would ſoon moulder away, and in a ſhort time come to an Alms: In fine, the *Monarchy Rebate much of Ornament in Peace, and ſtrength in War*: go very low, and ſhrink into Splineers.

Thus with ſeverer Judgments, 'tis no unconſcionable or foul Dealing, to Horſe the Eldeſt, and to leave the younger to ſeek out for a Steed.

Par. 106.

The Caſual Promotion, or Right of Deſcent.

IN nature this *Gourmond, Planting of Elderſhip, or Repeek of Trimogeniture*; is but the Chance or lot of being the Firſt-born: Hence Inheritance is the fortuitous Dole, and Favour of Fortune; and Godee Fortune, a plain Lottereſs: where uſually the ſolar or moſt Excellent, are fobb'd off with Blanks: But the *Saturnine or Gaffer Souls* grac'd with the Prize: in Juſtice happily no hard meaſure, ſince Ideots would trouble the Door; if not buoy'd up by the Imagery of Happineſs: And ſince others are enrich'd with Arras,

the

the Goods of the Mind, they may well be Content, *they enjoy more; then what feathery Revellers can ever hope to attain.*

However the *Moderator*, or *Umpire of the Law*, Equity; which ſhould relax and qualifie, the ſeverity of Juſtice; will give no Redreſs: But Capuchin-like, leave the Children, to ſeek their Bread; expoſing them to pittileſs Charity: for the Chancellor is bound, according to the Maxim: *To order the Kings Conſcience, according to Law.*

Par. 107.

Eſtates partible by ſome Sanctions.

BY the Civil Law generally, the Inheritance is Divideable among Males: At Common Law, if the Eſtate be Perſonal; 'tis likewiſe ſhareable: But Primogeniture, is a gracious Minion of the Common Law.

For Example.

If an Advowſon, deſcend to Coparceners: And they can't agree to Preſent; the eldeſt ſhall have the firſt turn: And the Aſſignee: By Right of Seniority, or Priority of Birth.

Par. 108.
Cuſtomary Law conſiſts with Reaſon.

BY *Godmancheſter* or *Borough Engliſh*, for the youngeſt Son, to come Peeping: after the Inheritance, is more then luſtily promis'd, perchance orderly ſetled; juſtling out the eldeſt, and *ſnap all into his Claw*: is a Pertneſs with moſt over-bold, and unmannerly.

I confeſs this Law by many, is adjudg'd very odd and crabbed; againſt the very Courſe in nature: For by the ſteps in Nature, the firſt in Being, as eldeſt in Knowledge; in Juſtice ought not to be youngeſt, or laſt in Love: But firſt in Preferment. According to Philoſophy, there being *no Motives in nature; for a moral Tenderneſs, for what's unknown*: In Diſcretion to leave a Swan for a Goſling, is a ſtrange Levity; Having eaten no Salt with the one, the recent Companion, may prove old in viciouſneſs, though young in years: And ſo no good Angel for our Embrace.

Though the right Hand, was indulg'd by *Jacob* to *Ephraim* before *Manaſſes*: which *Joſeph* would have conferr'd on the eldeſt. But it ſeems the younger was the Tid-

ling,

ling, *Dads nown Child*, or *Mams White Boy*: or according to Law; *the leaſt thought on, the moſt unable to ſhift for himſelf, but as much a Gentleman.* And ſo merited the more Pity and better Portion.

Mootable Doubts.

1.

But whether Lands of this Tenure, in caſe the youngeſt ſhall die without Iſſue; ſhall ſtill deſcend to the younger: And not to the eldeſt, after the Courſe at Common Law, are fine Moots for *Utter-Students.*

2.

Whether one ſeiſ'd of theſe Lands, leaving Sons the Wife *Inſeint*; whether the Son in *Eſſe*, ſhall Inherit by virtue of the cuſtom: or the Poſthumus or After-born ſhall ouſt him; as in *Shelley*'s Caſe: is a quære for the under-Mooters: For by the 11 of *Car.* 1. I find the Court, Divided in both Points.

Par.

Par. 109.

The Inheritable Levellers or Brotherly Sharers a warrantable Cuſtom.

IN Gavelkind; that the Brothers only *Doient ouellement Inheriter*, ſhould ſhoal together, to ſhare alike; and run away with the whole Bleſſing: And put by the poor Siſters, to pick ſticks, to make their Pot boil: And happily go without the Price, of *Eſau's Birthright*; for their Pains: to Blunderbuſſes is very Hog-like, and almoſt Incredible.

Owelty of Partition Reaſonable.

This Parcenary or Co-Heirſhip of Lands, hath been along Time in uſage, becauſe built on the cleareſt Reaſon: for that every Son by the Verdict of Heraldry, *is a Gentleman alike*; and in Poſſibility of Law Co-heir, or equally born to the Bleſſing: who happily through *honeſt Strivings*, may not only make Himſelf; but even enlarge the Family, if turn'd abroad with Powder and Shot, to bird for a living: that is, ſomewhat fledg'd with *Res relicta*, a Competency;

petency; which probably may render the Flight Prosperous: But if thrown off *with a Spar-Hawk, and four Nobles Rent, when he can catch it*: or kept at Home all his Prime, as a Drudge; and when the Parents turn is serv'd, shak'd off without Hands or Legs, naked into the world: his House can expect no Advantage or Credit; by this scanty cruel *Purparty*, and unnatural Nurture; but Calamity and Shame: for that *Brick cannot be had without Straw, nor even mud Walls dawb'd up by Drudging, without Materials.*

The Egalty of Sharing no new practice.

Neither is this *Shashton* or shifting; without President; for the whole world became a *Divident* among three: happily imitated by the first *British King*, and so continued: But this Co-Heritage or Partnership of Estate, was very provisionally to make good Families, by the 31 *H.* 8. made indivisible, after the Course of the Common Law: this Inheritance *pro Indiviso*, or dribleting usage, proving very devouring: As the Child of *Idleness, and the Decay of brave Descents.*

Law Ruleable by Cuſtom.

A ſtranger Cuſtom I have from our ancient Writers; that if a Freeman took a Villein to a Freehold and *libero Thoro* or *Free-bed*: And they had Iſſue two Daughters, one ſhould be Free, the other Villein.

The ſervil'ſt Condition of Servitude.

The *Subſtantialis* which *Bracton* ſpeaks of; that *what is the Servants* either by Deſcent or Acqueſt, *ſhall be the Maſters*: is a Law fuller of ſtrangeneſs.

Par. 110.

Cuſtom Patron'd by Law.

THat the Heir at 15 by Feoffment may alien; but not by Deviſe: nor by Leaſe and Releaſe, which in Law of Charter Lands, amounteth to a Feoffment.

By ſome cuſtom, when He can meaſure an Ell of Cloth, or tell twelve pence; with crawling ſcruplers, ſavours of the Croſs and Pile, or Span-Counter: for a meer youngſter, juſt out of the Shell; may perform ſo eaſie a Task: And yet

to

to be inabled, to do the ſolid'ſt and graveſt of Acts; is ſtrange up to the Hilts: for ſo we muſt adjudge the Parting with the Temporal Bleſſing; for without it, the ſoul can hardly ſolace, in a quiet Sphere, to mind Heaven.

Par. 111.

A Conceſſion void, if not Purſuant to the Cuſtom,

IN Copy-hold Lands, if the Cuſtom be not ſtrictly purſued, the Grant may be Avoided.

As by a Caſe.

Conceſſo the Ancient Rent, hath ever been in Gold: and on a Renewing, the Reſerve is in Silver: this variance in Quality only, is enough to daſh the Grant.

I find by an old year-book, that at Common Law,

If one fell a Tree, and at the ſame Inſtant carry it away; the Law will charge but Treſpaſs: But if the Tree be ſuffer'd, to lie ſome Time, and then be ta'ne away: the Priſant or Taking will be Death.

In

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In

In brief, Cuſtomary Lands not forfeitable for Felony; *as deſcendible Eſtates* at Common Law: but the *Father to the Bough, and the Son to the Plough*: with the ſevere taſtes, of the Cherry-Pitt, and is marvellous.

Par. 112.

The Female Inheriting maſculine Reaſon: Becauſe Indulg'd by Law.

AT Common Law; *For the Females to have All*; by ſome Cuſtom the *Eldeſt*, by ſome by Right of Propinquity or Proximity of Blood, the *Youngeſt Alone*: And not the next Heir Male by Right of Honour, or Courſe of Nobility, to prevent *Abſaloms Bewailing*, and continue the Name and Memory of the Anceſtour: are the *Stumbles of the Wiſe*, and Strange in Conſcience. Which put the great Judge to a *non-plus*, in that famous Caſe of *Salphaads* Daughters; and for a Deciſion, enforc'd an appeal to Heaven.

Par. 113.
Thirds the usual Joynture of the Common Law.

1.

AT Common Law, the Wife Indowable only of *the third Foot*; of the Tenements of which her Husband, *dy'd seis'd during the Espousals*: to hold in severalty during Life. Which is but reasonable though she brought nothing, (a *virtuous Woman being more valuable then Rubies*;) otherwise in case of a rude or Careless Husband, she and her Children may beg.

Par. 114.
Dowable of the Moity by Custom.

2.

BY some Customs, the Wife to have *Half of the Lands*; which is not unreasonable: it being Intendable, not for her self alone, *to Gallant it*; to cast off the Children to moan for an Alms: but to breed them in the Fear of God, and when grown up and capable, to settle them in civil Callings.

Par.

In brief, Customary Lands not forfeitable for Felony; *as descendible Estates* at Common Law: but the *Father to the Bough, and the Son to the Plough*: with the severe tastes, of the Cherry-Pitt, and is marvellous.

Par. 112.

The Female Inheriting masculine Reason: Because Indulg'd by Law.

AT Common Law; *For the Females to have All*; by some Custom the *Eldest*, by some by Right of Propinquity or Proximity of Blood, the *Youngest Alone*: And not the next Heir Male by Right of Honour, or Course of Nobility, to prevent *Absaloms Bewailing*, and continue the Name and Memory of the Ancestour: are the *Stumbles of the Wise*, and Strange in Conscience. Which put the great Judge to a *non-plus*, in that famous Case of *Salphaads* Daughters; and for a Decision, enforc'd an appeal to Heaven.

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Par. 115.

The Free Bench Indulg'd by Cuſtom.

3.

BY the Bounty of ſome Cuſtoms, to have *l'entiertie*, or the whole without Paying one Groat of Debt; with many is thought very unfitting, and too large a Portion: to be left at Liberty to marry again, or turn *Gallantreſs*; to undo Her ſelf, and beggar the Children: which is directly againſt the Civil Law, and the *Canons of modeſt Reaſon*. One would think *Dowment de la pluis Beale, of the faireſt or beſt Part*, ſhould ſatisfie the Law: and not ſuffer the Relict, to ſwallow the whole.

This Favour of Law is call'd *Frank Bank*, becauſe the *Free Gift or Proviſion of the Law*: without the Care and Contract of the Parent, or Covenant of the Husband.

But this Boon of Law, is without doubt, violently intended, to pay Debts, for the mutual Benefit of the Children. Neither can I Imagine any Reaſon, but Equity may enforce it: And not for the Wife

to

to ſoop All, and ſet it Flying idlely and laviſhly; in *Miſtreſſing or Maſquing.*

Impriſonable before the Debt be due.

4.

By the 5 *E.* 4. if a Debtor become *incerti laris*, of uncertain Abode; He's Arreſtable, before the Day of Payment: this ſeems againſt natural Reaſon; for one through the variouſneſs of Fortune, may unavoidably be put to his ſhifts; to abſcond and live Privately; on Purpoſe to ſatisfie the world: the *wearer beſt knows where the Shooe pinches*; every one is the beſt Juſtice of Himſelf, and what will better his own Condition: and therefore Hard, to fore-Judge any mans Integrity; till a Failer doth appear.

Contracts Obligable by Cuſtom.

5.

By Cuſtom if one Citizen be indebted to another, in a ſingle Contract; it ſhall inure as good and Forcible, as if by Bond: and the Adminiſtrator liable: which I find adjudg'd in point, 37 *Eliz.* Nay this Cuſtom ſhall bind Strangers.

To be Jury and Judge in their own Cauſe is Allowable by Cuſtom.

6.

For the Metropolis or Head-City, to certifie their Cuſtoms by the Recorder, or their own mouths; for 'tis no better in effect; without ſubjecting it to the Tryal of a foreign Jury: whether Reaſonable or no, and ſo Judges in their own Cauſe; is uſual.

'Tis Conceiv'd not ſo full Juſtice, to be Party and Judge in their own Concerns: though Confirm'd by Statute, doth not mend the matter: for *Acts of Parliament in Diameter or Thwarting, natural Equity, and Common Right*; and in ſeveral other Caſes are void.

Ceremonies, that gives more ſolemnity to Law, Approvable.

7.

By the Courſe of ſome Mannors, Sales not valid and of abſolute ſtrength in Law; unleſs Preſented at the next Court: By 41 *Eliz.* it gives more notice of the Alienation, and therefore the Cuſtom beneficial and good.

Now

Now ſhould the Steward, refuſe the Preſentment; 'tis ſcrupled what Remedy the Buyer may have, againſt the Refuſer or Seller: the ſame of a Bargain and ſale, if the Clerk deny an Inrollment of the Deed; to Compleat the Aſſurance: what Relief the Bargainee ſhall have.

In both Caſes I find the Law doubtful, with a *Caveat Emptor*; which is but cold Comfort and no ſatisfaction: the Party griev'd will be forc'd to fly to Equity, and take his Chance in Conſcience: which ſome think may pity his Caſe, and give Relief.

The Remedy againſt the Unjuſt and the Uncivil.

8.

The 41 *Eliz.* is ſilent of the ſufficiency of the Law in both Points: and leaves it as *Caſus omiſſus*, not thought on and unprovided for by Law? But by the Favour of the learned Reporter, I conceive the Law very Remedial in both Caſes.

1. To the Copy-land, the Acts of Law, Requirable by the Cuſtom, on the Vendor's ſide are not ſufficient; till Perfected by the Preſentment, and the Acceptance of the Steward: who officiates but as a ſervant, and Removeable at will. There-

fore 'twill be at the Peril of the ſeller, if he Play the Jack: there's no ſence why the Purchaſer ſhould be at any loſs.

The like to the Clerk of the Inrollments, 'tis a forfeiture of his Office; for Denying Juſtice to any: in both Caſes they are liable for what Damages the Abuſed have ſuſtained through their Default.

If a Sheriff deny a Return, or make a falſe one, 'tis vindicable by Action. Nay, a *greater Miniſter of Juſtice*, then ſuch petty Abjects, as *Green Bags*, or *Black Boxes*; if He delay the Preſentee in his Inſtitution, He's Compellable by Law: otherwiſe he might *take Advantage of his own wrong*: an Abſurdity the Law will not ſuffer.

A Biſhop bound to ſhew the Cauſe of his Refuſal. For a ſhifting Plea He's Amerceable.

9.

Neither is a Biſhop by 32 *Eliz.* Allow'd to trifle with Juſtice: for on a *qua. Imp.* brought for Refuſing a Clerk: his *Plea muſt be certain and full*; his bare Alledging that the Clerk is *Schiſmaticus Inveteratus* will not ſatisfie: without ſhewing in Particular, How and in what, that the Court

Court might (*with the Aſſiſtance of Divines*) determine the matter before them. And therefore *for a Dilatory Plea, the Biſhop is generally Amerc'd.*

Permiſſive waſte unpuniſhable.

10.

If one Demiſe a Farm, with a fair Houſe, and fruitful Herbage thereunto Belonging, at will: And the Tenant prove an ill Husband, over ſlothful and Baſe: ſuffering Both to go to Ruine.

The Houſe to fall down for want of timely Repairs; or Burnt through Careleſſneſs: And the Land to be *Juncoſe* or become Ruſh'd over, even over-run with Weeds and chok'd up. 'Twill ſoon be Demanded, How the owner ſhall right Himſelf, of ſo wretched a Fellow.

At Common Law, by the 42 & 43 *Eliz. B. R.* I find it Adjudg'd in Point, no Relief: And the Statute of *Gloſter*, leaves it Incurable.

Neither do I find it Curable at all: for by the Pliers in Equity, I'me Aſſur'd *the Chancellour is not ſworn, to make Fools Wiſe.*

If men dread any After game, a Gods

fore 'twill be at the Peril of the ſeller, if he Play the Jack: there's no ſence why the Purchaſer ſhould be at any loſs.

The like to the Clerk of the Inrollments, 'tis a forfeiture of his Office; for Denying Juſtice to any: in both Caſes they are liable for what Damages the Abuſed have ſuſtained through their Default.

If a Sheriff deny a Return, or make a falſe one, 'tis vindicable by Action. Nay, a *greater Miniſter of Juſtice*, then ſuch petty Abjects, as *Green Bags*, or *Black Boxes*; if He delay the Preſentee in his Inſtitution, He's Compellable by Law: otherwiſe he might *take Advantage of his own wrong*: an Abſurdity the Law will not ſuffer.

A Biſhop bound to ſhew the Cauſe of his Refuſal. For a ſhifting Plea He's Amerceable.

9.

Neither is a Biſhop by 32 *Eliz.* Allow'd to trifle with Juſtice: for on a *qua. Imp.* brought for Refuſing a Clerk: his *Plea muſt be certain and full*; his bare Alledging that the Clerk is *Schiſmaticus Inveteratus* will not ſatisfie: without ſhewing in Particular, How and in what, that the Court

Court might (*with the Assistance of Divines*) determine the matter before them. And therefore *for a Dilatory Plea, the Bishop is generally Amerc'd.*

Permissive waste unpunishable.

10.

If one Demise a Farm, with a fair House, and fruitful Herbage thereunto Belonging, at will: And the Tenant prove an ill Husband, over slothful and Base: suffering Both to go to Ruine.

The House to fall down for want of timely Repairs; or Burnt through Carelessness: And the Land to be *Juncose* or become Rush'd over, even over-run with Weeds and chok'd up. 'Twill soon be Demanded, How the owner shall right Himself, of so wretched a Fellow.

At Common Law, by the 42 & 43 *Eliz. B. R.* I find it Adjudg'd in Point, no Relief: And the Statute of *Gloster*, leaves it Incurable.

Neither do I find it Curable at all: for by the Pliers in Equity, I'me Assur'd *the Chancellour is not sworn, to make Fools Wise.*

If men dread any After game, a Gods

name let them Away to the learned Lawyers, and for a good *wholeſome Fee*, they will ſecure them againſt ſuch unlucky Rentors.

Voluntary Vaſtation Puniſhable.

II.

For ſpontaneous waſte, as pulling down of Houſes, Ploughing Meadows, Deſtroying Woods; *which alters Evidences, and ſo tends to a Diſ-inheriting*: I conceive it, Puniſhable by Action of Treſpaſs: It amounting to the Determining of his Intereſt, without Entry of the Leſſor.

Par. 116.

Conſcience muſt be Submiſs and Silent, to the Digeſt of Policy: *Law.*

NOW there's no Mooting for Conſcience in theſe Points, it muſt Conform and agree it for Law: And if Law, then Juſtifiable at the *grand Siſe*; for if not Connatural, or of the like Dimenſion, with the *Law eternal*; 'tis monſtrous and not to be practis'd.

To clear this by a Caſe.

If J. S. infeoffe J. N. of all his Lands in

in London and Middleſex: And give Livery only in London, the Lands in Middleſex will hardly paſs: had they lain all in one Shire, though Remote, it had been a good ſeiſin of All.

In natural Conſcience, doubtleſs they are Convey'd, by the ſame Intent, Compriz'd in the ſame Deed; and the Conſideration the ſame: yet the *great Oracle of Polity*, the Law, will not allow of the one, though it tolerate the other.

Conſcience guidable by Law.

A Bond defeaſanc'd, to murder J. S. is void: but a Feoffment, Condition'd that the Feoffee, take a Purſe on Black-Heath: the Eſtate is indefeatable, though the Condition be impudent and bindleſs.

So

A Grant, that the Grantee ſhall not Alien, nor be Perſon of the Profits: the Eſtate Compleatly good, though the Proviſoe be trifling and illegal: an obligation in both Caſes, Concords with Law.

name let them Away to the learned Lawyers, and for a good *wholeſome Fee*, they will ſecure them againſt ſuch unlucky Rentors.

Voluntary Vaſtation Puniſhable.

11.

For ſpontaneous waſte, as pulling down of Houſes, Ploughing Meadows, Deſtroying Woods; *which alters Evidences, and ſo tends to a Diſ-inheriting*: I conceive it, Puniſhable by Action of Treſpaſs: It amounting to the Determining of his Intereſt, without Entry of the Leſſor.

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NOW there's no Mooting for Conſcience in theſe Points, it muſt Conform and agree it for Law: And if Law, then Juſtifiable at the *grand Siſe*; for if not Connatural, or of the like Dimenſion, with the *Law eternal*; 'tis monſtrous and not to be practis'd.

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So

A Grant, that the Grantee ſhall not Alien, nor be Perſon of the Profits: the Eſtate Compleatly good, though the Proviſoe be trifling and illegal: an obligation in both Caſes, Concords with Law.

For a more Familiar Diversity.

If an Infant or Mad-man, steal or kill; unless wittingly and maliciously: they shall not be impeach'd: But in Trespass for a Corporal Hurt, they may be impleaded and punish'd too.

So

In Felony, if the Principal die, or be pardon'd before Conviction; the Accessary is quit: But in Trespass, 'tis simply otherwise.

For

If J. S. abett his servant, to strike J. N. or burn his House: if the Abettee die, yet the Action of Trespass or Conspiracy, stands good against the Abettor.

In these Points, according to the sages of *Political Reason, Law; from Diversity of Law, arises the Diversity in Conscience:* which ought to be lead, by the Amber Chain of Reason, that is, Law; And not by the Hempen Cord of Fanatick Opinion.

Thus may we see with half an Eye, indeed if blinder then a Beetle; how Insolent and Groundless, Pretence of Conscience;

ſcience; is repreſented by the Perſpective, of *Refin'd Reaſon*: that clean and blanch'd Reaſon, doth not regard every Scullion frantick Humour; nor will it be rul'd by the *Diſtaffe*: ſo it reſpects the ſafety of the Church, the Common Peace; 'tis ſufficient to be engrav'd in every Breaſt, and obey'd by All: but Rebels and Pagans.

Par. 117.

A good Conſcience Regulable by Law.

TO come more cloſe to the Saints, to prevent rude Sallies on Divinity: let's agree the Conſcience, the *Reflex of the ſoul*, or *Nuntio of the Diety*; garbling the good Objects from the Bad; the white Angels from the Tawny: *Ad vulgus* or in a ſecular ſence, 'tis ſtill but *winnowed or Exalted Reaſon*, Law: which muſt be Hammer'd and Regulated by Magiſtracy; and ſince Oracles are ceas'd, the voice of God ſilent; what other Aſyle can there be? 'tis true, the Power Divine (in *the Throne of Diety*, *the Soul*) is ſtill vocal: though not Articulately to the Ear; yet Intrinſically by the Impulſives of Nature, to the Conſcience: his ſpeaking by Supremacy, muſt be Recorded; and as to Ex-

Externals, the Dictates of *Fann'd Reason, Law*; ought to be obey'd.

A Citation before an Incompetent Judge, dangerous.

To instance this by a Case.

If J. S. be Excommeng'd in the Court spiritual, for matter of Temporal Cognizance: which properly belongs to the Crown, and Dignity Royal: He must be Assoil'd, without making satisfaction: if the Plea be continued, a Premunire may endanger, the Party litigant and Judge too.

So

If a roguish Royster, lay violent paws on a Clerk, handling him somewhat roughly with Blows, the Battery is soly Determinable in the Court Temporal: the Rudeness to the Person, Pour ingetter les violent mains sur luy, in the Court Christian.

At Common Law.

Dato that a Lease by Deed, is made to J. N. Remainder to the Right Hrs of J. S. with Livery too, according to the Form of the Charter:

ter: Here's a good Estate, to vulgar Reason, in Conscience; but in Law, the Remainder: if J. S. be then living, flutters without a Wing, and is void.

The like.

Lessee for 40 years, takes another Lease for 20 years: Conscience intends to inlarge his Interest to 60: to make it up a round number of years, equivalent to a solid Estate: However his Condition is worsted, and in Law here's but an Estate for 20 years.

Thus Conscience must comply with Law; if not, the Law will be more then Angry, fling and bite too.

Par. 118.

No Faultiness in the Law.

WHY should *sublimated Reason*, the Law, be storm'd or flouted at? being no way Factious, having no side; no by-ends, no leaning or Respect to any? I confess 'tis past ordinary Cunning, to encounter this Monster, to reduce Schism, to the lines of Mediocrity; to submit to legal Prudence and Authority.

The

Spuriousneſs of Zeal to ſpurn at Law.

The world is come to a fine paſs, huge Hopes of Saint-like Times; when the Spindle and the Prong, every blober-lip'd Wiſe-acre, not a Flight *quoad Intellectuals* above a Plant-Animal; muſt queſtion Acts of State: And not only demur in Obeying, but manfully jocund Himſelf, in Reſiſting: 'tis neither grave nor ſafe, to romp and wherle, through Thick and Thin, *lege inconſultâ*, without Adviſing with legal Diſcretion: to plunge themſelves in needleſs Troubles. *The Law marches ſlow, but diſcharges ſwifter then* Pegaſus.

Par. 119.

Single Conſcience muſt Conform to the Univerſal.

I'Me ignorant of the Reaſon, why a *Private Conſcience* ſhould not comply with the *Publick*, that is, the Law: Provided it be no way Pernicious, overtly polluted, with ſuperſtition; not Incongruous with the Word of God: ought any be ſuffer'd to adore their own Phantaſms, the ſwifteſt ſlide to Perdition?

Ragers

Ragers against Order not Tameable by Mildneſs.

And ſince our Reſtraints are not keen enough, to quiet this Divine Rage: whether we ought not, to Contrive ſtricter Shackles, to curb and tame unrulineſs: let *Ignoramus* Judge:

The ſtifeſt Doves if Decimated, will Bend rather then Bent.

Aliud Plectrum, Aliud Sceptrum: Commutation or round Mulcts may reform; ſince Deporting or Corporal Pains will not prevail:

The Pigeon knows no woe,
Till a Benting ſhe doth go.

They Peacock themſelves in the one, but would hardly bruſtle or brag of the other: when they return home and find all clean Swept; nothing left to nurſe their Cynical Zeal, they will then bethink themſelves, and reſolve, *that moderate Obedience is much better then traping Sedition.*

SECT.

SECT. XVI.

Par. 129.

Miſ-conceivings, and miſ-Teachings, Diſſected and Reſolved.

'TIS miſconceiv'd and Precepted too, by ſome *Tripanning Wits*; *the Trumpets of Uproar and Drums of Rebellion*: That

1. No Theft ought to be Capital.
2. No War can be lawful.
3. Going to Law, is not Warrantable.
4. That the *Centurion of the Soul, Conſcience*; is purely ſpiritual: And ſtrictly by Divine Right, ought *not to be Bated or bounded by Law.*

1.

For the firſt: becauſe Pains in Law, muſt be inflicted *Egalment*, or equally to pace the Offence: And there can be no Analogy, between the thing ſtoln, and mans life: And *to puniſh, beyond the Damage, is cruel and outragious.*

2.

For the ſecond, That according to Chriſt,

Christ; if one cheek be smitten, the other must be turn'd: And that *Revengement belongs not to Mortals.*

3.

For the third. That St. *Paul* in some Rage, chides the Corinthians for Going to Law: And *enjoyns them, rather to take Wrong, and be Defrauded.*

4.

For the fourth. That 'tis more then a *Purpresture*, or foul Encroachment, on the divine Priviledge: the Conscience being a *noli me tangere*, a *kind of Deified Essence:* that must not be touch'd, but by the *Spirit of Souls*, the Celestial King: And that *Civil Laws bind no faster then Shashes and Garters*; that may be loosen'd, and thrown by at Will.

Punishing Theft with Death Consists with Conscience.

1.

For the first. I conceive the Mosaical Laws, are not simply, only modally; not Absolutely, only Directorily Binding to us: therefore Christian States, have *decoll'd* or taken off capitally, Malefactors; mulcted by them only by *Retaliation*, or like Damage.

That

That there's no Parity between Humane Life, and the *Purloin* or thing ſtoln; I agree it, taken materially: But in the Pilfery, we muſt Conſider, not the Beguiling alone our neighbour; but the Breach of the Peace: And therein not only ſetting at naught, but Reſiſting the whole State. And that *the Publick Peace, is much dearer and valuable; then any ſingle Tear-grounds life*: no Brow form'd of Braſs will deny.

But other Pains (they ſay) might be Inflicted, not Death; and in every petty ſlide, the Peace is equally broken, as in weightier matters.

Laws muſt be modell'd, according to the Temper of the Clime: And the Sword of Juſtice is ſoly at publick Diſcretion. And therefore among the Arabians, where Thieving (if ſome write true) is almoſt as much in uſe as Eating; doubtleſs ſtricter Pains juſtifiable: Hence our *Halliſax* Law, may not be Amiſs, in favour of Property, to promote Trade.

The Diverſity of Laws.

By ſome Laws Stealing an Oxe or an Horſe is not Felony: But for a Capon or Pig, I find the Stealer muſt be *Pandue* or ſuffer Death.

At

At Common Law, originally *Cutting* on the Road, no *ſuſpend' per Coll.* an Hempen Truſs; only a moral Failing, or Treſpaſs: afterwards the loſs of the Thumb. Now by neceſſity in State, a *Tyburn Chook*; otherwiſe Property nor Life could not be preſerv'd: which Divines agree lawful.

So formerly Counterfeiting the Great Seal, but Felony; now Treaſon: Rape at Common Law, no *ten Groats mulct*, according to *Solon*'s Ordinance; but the loſs of Eyes and Teſticles: now by *Weſtminſter* the firſt, *Felony*.

By the Civil and Common Law, to Steal a Sheep out of the Fold, or an Oxe out of the Herd, 'tis Theft: by *Ulpian* to rob a Dovecote 'tis Larceny. But at Common Law, Beaſts untam'd may be Taken without the Danger of Felony: But if Tame and Domeſtical, the Taker is by the Common Law, no better then a Felon. Maliciouſly to crop or cut a Vine, by the Civil Law; 'tis Puniſhable as Theft. Thus *Pains vary* (*according to occaſion, and neceſſity of Affairs*) *by the Prudence of Divines and Lawyers.*

At Common Law generally, ſuch is the Candour of Juſtice; *the Pain muſt reſemble the Offence*: for if the Damage be

aſſeſs'd too Exceſſively, in Arreſt of Judgment, as outragious; a new Trial on Courſe by motion will be Awarded, to qualifie the Exceſs: in Reducing the Damages anſwerable to the Treſpaſs.

As Preventives againſt future Miſchiefs, ſometimes Puniſhments are not *Ouelment* or evenly impos'd: As the Statute for waſte, gives *valorem vaſti in Triplo*, treble Damage with the Place Waſted.

The like for Defrauding ſpiritual Duties, *treble Amends*: otherwiſe farewel Religion; the Church Door may be nailed up; ſignifying indeed no more then a Steeple-Houſe; when the Paſtour is famiſh'd, by ſubſtracting his Livelihood.

War ought not to be made, but on juſt Cauſe.

2.

For the Ground of War, Divinity and Politicks, ſever much in opinion: the one limiting it Strictly, for Wrongs firſt ſuſtained; the other takes it more largely, conceiving a deliberate Fear, of an Approaching Danger, good Cauſe of unſheathing the Sword. Which certainly by the Practice of State, may warrantably ſet the Souldier on work: It being

Com-

Commendable in all Fray's to get the beſt end of the Staff, in being before Hand: And not by Supine Trifling, to ſuffer Advantage, to give us the ſlip.

War Lawful.

For the lawfulneſs of it: for *Defenſive or Reparative Cauſes*, few Divines doubt: for Avengement and Enlarging Dominion, with little ſleights; *meer Fumes of Honour*; there *Cœli Injuria, Cœlo Cura*: an Appeal to Heaven, is the only Cure, I ſhould Adviſe. *Every publick Abuſe being Recorded above*, as done to the Vice-gerents, of the Omnipotent. And ſuch are moſt Proper, for the great Judicatory, not Impleadable below. But that the Calling of a Souldier is totally unlawful; a common Conceit with the Croſs-grain'd, I cannot Agree: For then the Centurion's Faith, would not have been Applauded; nor that famous Convert, ſecur'd Himſelf, againſt the Perfidiouſneſs of the Jews, by the aid of Sword-men.

War not fair and King-like, without warning by Proclaiming.

In Peace if at *Civil warfare*, notice by

Summons and Citations be peremptorily Requir'd: that Dodgers take no Advantage, with Covinous Tricks, by Packing the Cards: the like in *Military*, by noble Spirits 'tis thought Cowardly and mean, to ſneak upon the Injuror, without *Denouncing open Defiance*: for this I find the Authority an *Ipſe Dixit*, enjoyn'd by God himſelf. *David* indeed for the Abuſe to his Embaſſadours, did wage War againſt the Ammonites: But not without giving them notice, of his Intention; to *vindicate his Honour*.

Herein I find the Concurrence of the Law of *England*, in *Paſcatia's de la Fountaines* Caſe a *Spaniard*; whom the Judges conceiv'd no Enemy, to be deny'd the Benefit of Juſtice; till open War were proclaim'd, between both Kingdoms; though ſeveral Acts of Hoſtility were Committed.

Arms juſtifiable if Repairs be Refus'd.

By this we may Collect, that a Prince may juſtifie Arms; if ſatisfaction by *amicable Demands* be deny'd: But to ſnatch and pilfer a Booty; by Law Military, without Proclaiming War, and *Throwing of the Dart*, is doubtleſs very un-Prince-like

like and unjuſtifiable: ſtrictly by *the Law of Honour*, no victory; only oppreſſion by Surpriſe and Rapine: no valianter then to Draw, on a naked man; or to Creep on a ſlumberer, to prevent his Wake. In both Caſes, by the Gallant, Hen-Heartedneſs and unwarrantable.

Law neither Coſtly nor Uncivil.

3.

For the third. Going to Law, not ſimply unlawful: for then not only the Coat, but the Cloak too, would ſoon be gone; And the Body left over naked, without Leaves. *Unlawful only ſub modo*, by Circumſtance of malice, oppreſſion or the like: That with the Apoſtle, is utterly a *Fault*; and *no Darling of Law.*

The Law, like *the Deputy of Heaven, the King*; hath no gloting Eyes: petty offences are not only Traverſable, but not Actionable: Regularly *the Law will never feſter, where it can cure*: Being the *Phyſician General of the State*, to prevent ſtrife, and not to beget it: therefore words of Heat and Choller, though utter'd by a ſmall member, yet often ſharper then a two-Edged Sword, the Law will not heed: *without Temporal Damage.*

Would to God the Factious knew their own Happineſs, Frolicking in *Goſhen*, that even over-flows with Wealth, and over-much Freedom: then they would leave Flouting Magiſtracy, and Back-biting their *beſt Friend*; the Law: for the Law more tender-hearted, then the Empreſs, that hatched an Egg in her Boſom: like a good Maſter, to whom we have All ſworn Allegiance; principally aims at a *triple Avowment*, to make the Subject Compleatly Happy.

The threefold Protection.
1. To Guard the Perſon.
2. To defend the Eſtate.
3. To preſerve that, which is more Precious, and of a *Nobler Preiſe then both*; to wit, the Good name.

1.

If the Perſon be menac'd, and but in Dread of an Aſſault; the Bear may be muzled at Common Law as a Treſpaſſer: As well as Juſticed by Surety, *de bono Geſtu*, for the good *Abearing*.

For Example.

If A. ſlay B. though neceſſariò (as the Civil Law terms it) in ſafe-guard or Defence of his own Life: the

the Town shall be Amerc'd, with the loss of his Goods.

Though Justifiable even by the Law of Nature, and Commendable too: *to kill rather then be kill'd*: yet the Law will Punish, in Testification of Tenderness; that heretofore was Death.

At Common Law, Killing by Misadventure though not *Destinatò*, with a *man-slaying Intent*; 'twas Murder: nay by 21 *E.* 3. 16. a Man-slayer though *se defendend'*, was Hangable: and estate forfeitable in both cases as of Murder. Neither is there any great Injustice or strangeness in this, without a slaughterous Intent; or malice *prepense*: for the same was at the Judicial Law, before Sanctuaries and Cities of Refuge were Erected. But these Mischiefs at Common Law, were Remedied by the 25 *H.* 3. the St. of *Marlebridge*.

This strictness without malice preconceived, was the *Law of mercy*, in Prevention of Blood: ut *Dolor ad nullos, Terror ad Cunctos perveniat*: to fright All and punish none.

2.

For the Fortune, one's more safe, by a *Quare clausum fregit*, then if surrounded by *Xerxes* Host.

3.

For the Good name: Repairs will be had againſt Defamatory Bullets, ſnagled by malice; by Action on the Caſe: which will ſtill keep the worthy more *Shot-free then Caneus.*

Par. 221.

Property Demonſtrated.

THat ambulatory Treſpaſs may be brought, 'tis on neceſſity of municipal Reaſon, to avoid a publick Inconvenience: For in ſupputation of *boulted and ſeirs'd Reaſon*, all Lands are mounded, though they be Campagne, or lie unhedg'd: which among Lawyers, is Reaſon not far fetch'd, much ſtrain'd or Imaginary; if we Conſult the Dominion of the Sea: which by Reaſon of its floting Currency, cannot be walled or Paled in: nor limited *per metas & Bundas*, by meets and Bounds, after the good Husbandry and Uſage, of our *Mother Element*: yet in Contemplation of Law, 'tis deem'd ſhut and Enclos'd; though the Fence be not pointed out, by an Iſthmus, Rock, or any other known Buttal, like an Agrarian Mound.

By the Marine Law, any kind of Putative Boundary, by oblique Lines,

Turn-

Turnings and Angles, doth Expreſs Shutting and Entloſure: And in nicety of Law, annote as great a Right on the Sea; as any Arcifinious mark, or viſible Bound, on *Terra firma*: in a legal Meaning, thoſe Extracluſe Buttings, notifying a bounding Frontire or bordering Royalty.

The Lordſhip of the Sea, Debated and Avouched.

On this Notion in Law, 'tis not hard to Conceive, a Naval Sovereignty: though Expos'd with open Arms, Catholick and Common to All. Yet may the Piſchary, as in private Rivers, with other navigable Priviledges, be claim'd and enjoy'd; without Encroachment, or Infringing the *Univerſal Rule*, or Law of Nations.

The famous Civilian, that labours to have it in Common; argues more like a Philoſopher, then a Lawyer: when he draws his Flouriſhes, from the *Freedom of the Air*; with others of the ſame ſtrain, which are meerly Rhetorical, and not Topical: For what's in *Occupation*, *Cuſtom*, *or Command*, there's *Property in Law*: or within the Reach or Protection, of our *Timber Walls*; the Law will create a Property: But that ſome Waters are poſitively ſo, none can gain-ſay. Therefore Com-

Community without leave is a Diſſeiſin, an Encroachment or Breach of Civil Peace: and good Cauſe of War, if Reparations cannot be had otherwiſe.

Tokens of a Maritime Intereſt.

The Conſtant Homage of *Loring the Sails*, doth imply Dominion: otherwiſe Strangers, of as high Inſteps as our ſelves, and ſtand much on the *Tiptoe of Honour*: would hardly be ſo Civil, ſignifying in Law, as Flags and Marks of Sovereignty.

Chriſt-Dole Demandable and Due.

In a Pond, Mote, or ſeveral Piſcary, Tythe payable as a Predial; and ought to be ſet forth, as the 2 of *E. 6.* directs: of Fiſh taken in the Sea, as *Decimæ minutæ*, like Herbs, ſome Doubt hath been made; becauſe *feræ naturæ*; and the Sea within no Pariſh; which are but Tiffany Reaſons, and not at all Convincing: for *Aquatiles* in freſh Rivers, are juſt as Haggard or unreclaim'd: And Lands though *Extra-Parochial*, are held clearly Tytheable, to the *mixt Perſon*: 'tis granted a ſum of mony, ſhall be paid in lieu of Tythes;

Tythes; which infers sufficiently, the Law thereby adjudges an owner-ship: If Exotick and purely Personal, why then more Tytheable, then Spices and Lemmons? But by a late Prohibition, I find very Tythe demandable, for Fishing in the Sea, on their Landing: And that the Spiritual Court, might warrant such a Libel.

The Bi-partite Property of the Earth.

At Common Law, the Earth hath a two-fold Entire Property: the one *Subterraneous* or Downwards, of all Waters and Mines, within its Bowels: the other *Supra-terreous* or upwards, of Aire and all other Benefits, to the topmost Sphere: For if an Hawk reclaim'd, come into Sale, and light on a Tree; the owner cannot take his own Chattel, without leave; but will be a Trespasser; which shews there's *Property in speculation of Law, in the very Air*: And surely Waters are more *Mainorable*, that is Manageable, then Aire.

To enlarge this matter
By a Decision.
Mævius hinder'd Caius, from Fishing in a publick Water.

Two

Two Queſtions.

1. *Whether the Obſtructing were Injurious.*
2. *Whether Damageable, or ſuable at Law.*

Pomponius liken'd the Abuſe, to the Denying one, the uſe of the Common Bath, or Publick Theater: unto both (by him) All are promiſcuouſly Entitled by Law.

He conceives the Sea in no Propriety; but that all are joyntly Entitled thereunto: *As Tenants in Common.* And that Fiſhing is no more Prohibitible, then ſhooting at Wild-Fowl in anothers Ground: which by *Ulpian* is Receiv'd for Law, by Common uſe and Practice; although grounded on no Poſitive Law.

'Tis agreed one may have a ſpecial Right, to a Part or Creek of the Sea: and in caſe of Diſturbance, an Injunction to quiet the Poſſeſſion, is Purchaſeable on Courſe: which proves that Sovereignty may extend over Water, as well as Land: though it be ſeldom or never Decided by Law, but by that unhappy Trial, *of the longer Sword.*

The Sovereignty provable by uſage at Common Law.

As by a Caſe.

E. a ſole Trader, born on the Coaſts of Flanders: Is married to F. a Citizen of London; born in the Port of Deep.

Two Points.

1. *Whether* E. *were born within the Ligeance of* England.
2. *Whether the Birth of* F. *ſhall not be Conſtrued of a Ship, Anchoring in that Port.*

Reſolv'd.

I find both Points held in the Affirmative: And that *the Sea is within the Kings Ligeance, and Parcel of the Crown of* England.

The Immenſity of Water makes no Signiory in Common.

The vaſt wideneſs or immenſe Mightineſs of Sea-Room: *Elbow Room enough to ſatisfie All,* with Lawyers is a very babiſh Plea: And makes nothing againſt Dominion. For in Law, there's as much Propriety

priety in the largeſt Fields; as in *Croſts or Pitles*: *Pety-Cloſes or ſmall Paddocks.*

Therefore the great Civilian, though a *Compleat Markſman in all Learning*; in this Point, hath fail'd of his Aim: and hits not the Bird in the Eye.

Pat. 122.

The Right of Chattels Diſcuſs'd and Defended.

AS Lands are Adjudg'd in Law, to be Bounded; though Fenceleſs: the like doth the Law conceive of Goods, though *Subdiale*, or out of Doors: not under Lock and Key. Yet in Conſtruction of Law, they're Conceiv'd in *manual Cuſtody*; by the *ſecundary Coneluſion*, of the Law of Reaſon: to Conſerve Property.

Hence in Law Regularly, an Entry into the Freehold of another; even but to Hawk or Hunt, or barely to walk out, to take a mouthful of Air; *without Leave of the owner, or of the Law, is not Congeable or ſafe*: And ſuch Entry with the ſmalleſt Hurt, of Fiſhing Waters, or Cutting Graſs, is a Diſſeiſin *vi & Armis.*

The Prerogative or ſpecial Priviledge the Law aſcribes to the Houſe.

Beyond Controverſie, in Law every mans

mans House is his Castle; as well against violence, as for his Repose.

For Instance.

If J. S. happens to be slain, by J. N. se Defendendo, or Permisfortune: without any mischievous Intent. yet 'tis Felony, Goods and Chatels will be forfeited: for the high Regard, the Law hath to mans life.

But in Defence of his house, if Theeves, or any other Assailants, are Knock'd on the Head: 'tis Justifiable; without any Forfeiture.

The neighbourhood may assemble, to Guard an House, without a Riot: And in all Civil Causes, at the sute of a Subject, not Forcible even by the Sheriff: But on Recovery in *Ejectment*, by virtue of the Writ. For after Judgment, *in Right and operation of Law*, the House is not the Tenants, or Defendants: but the Recoverors or his Assigns.

In brief, as the House is the *Cittadel or Fortress of the Owner*: so the Estovers or fuel appendant to the House, the Lands; plenarily His: with the Conterminous or neigbouring Air, and all Avails,

usque

usque ad Cœlum, to the uppermost Elevation.

Conscience Commandable by Law.

4.

For the fourth. I cannot conceive, the *Keeper or Guard of the Soul*, Conscience; so nice and Immaterial: But that Sovereign Power, may limit it; without Infringing the Royalty of Heaven.

By what hath been Premised, comes up full to our Case; for the *Opiniatives in Religion*, a Depression, is violently Requir'd, by necessity in Prudence: otherwise not only Religion, but the whole Peace of the Nation, will soon be in Jeopardy: For by the self-same Fore-head, they scoff and pick Quarrels at the Church; they may upbraid and fall out in Earnest, with the Civil Authority: And in Hurling and Heaving at the one, the other is *desperately Abus'd and Despis'd.*

A queasie Conscience mightily Tolerated.

By Martial Law *Mutiny*, which is but *Sedition* in the Law Civil, is Death: if then the Mutineers, that is, the Seditious; come off with Paring of the nails, when

when the offence requires the Hand: or Cropping the Ears, when the Crime deſerves the Head: nay, with pecuniary Pains or Exilement, 'tis moſt eaſie, a vaſt Toleration.

Royſters Drownable, and the Shipper not queſtionable.

By the Maritine Law, in caſe of *Jetſam maris*, for the ſafeguard of the veſſel; the Goods of the choiceſt value, may be thrown into the Sea: Nay, the Mariners and Paſſengers, if not conformable to the marine Rules, may be thrown over-Board: And no Appeal of Homicide, by the *Prochein Amey*, or next a Kin, ſhall impeach this Judgement. The like in a Calm of Regency, if *roiſterous Obſtinates* will on deſign raiſe a Storm: if they ſuffer in their Eſtates, nay their Perſons lie by the Lees; they may praiſe their own Freekiſhneſs.

Militants moſt ſtrict in Diſcipline.

By the Civil Law, if the Souldier did but ward off ſome Blows, 'twas caſhierable: But if the leaſt ſhow of violence, or reſiſtance were offered; 'twas expiable with no leſs then Death.

Thus by Reason in State, *may Blades of Rhadamanth*; the Tores, Moss-Troopers, Kidnappers, with Burglars and High-way Lads: be rewarded with the Gallows, to prevent a publick Mischief: And likewise *Hocquetours* and Suborners, with Scoffers and Flatterers, Rumpers and Roarers against Monarchy: be scourg'd with Keener Tools, then Bull-rushes, or snipping the Lugs; to maintain Property and Peace.

SECT. XVII.

Par. 123.

Church Disquieters Prosecuted, not Persecuted.

LEt's suppose our selves in the Schools, and put the Wrangle into Mood and Figure.

To be dragg'd to Prison, for Divine Worship: is barberous and Persecution.

But

But our Church Wranglers (as they give out) are *Duress'd* for no other Crime.

Ergo Handled over Rudely and Perſecuted.

Were the *minor per ſe nota*, and evidently true; 'twere Hardneſs indeed and Perſecution: but the Law takes them as *Rioters*; not as *divine Communicants*: but as *Rebel Meeters, yelping againſt Law.* And the manner of their Worſhip, being not only turbulent and irregular, againſt the expreſs Commands of Law: But the matter Irreligious, againſt the Known Current of Salvation: with the niceſt, 'tis not Perſecution; but the Profeſſion and Duty, of the *Sub-Diety* or Sovereign Magiſtrate: according to ſome opinions, to cut out the Tongue, if ſowing up the Lips, will not reſtrain Profaneneſs.

Par. 124.

Garden-Gods not Adorable

WEre the Adorers of *Bel* and the Dragon; the Sun or Moon, Stock or Stone; fit to be accounted Idolaters, or divine Worſhipers? if ſilenc'd and cruſh'd under foot, can the weakeſt that never Studied farther, then the Horn-book; ad-

judge it Perſecution? being not whip'd as Saints, but paid off as Routers, in Blinching and ſnuffing againſt Law.

The Diſeaſed why Impriſonable.

Leproſie Corporeal, by the Judicials was murable, and to be ſhut up: *to keep the Eroken from the Whole*; in Reference to publick ſafety. On this Preſident, are the Peſtilential with us, Padlock'd and Guarded: And once mark'd by Law, ſhould the viſited adventure Abroad *without Leave*; the Watch may *reſiſt them as Felons*: How then can Divines take it ill, if for *Leproſie ſpiritual*, the Law be the ſame.

Par. 125.

Profane Mutes ſeldom Diſturb'd.

FOR Perſecution 'tis an impudent Fable, rak'd from the *bottomleſs Pit*, to mire the Church: I know no *Inquiſitive Law*, to pick the Conſcience; if the Poyſon be lock'd up, all's quiet: But if like mad Brutes, they will up and down, and ſpread their Frenſie; to draw Diſciples: then the Law Catches them, not as miſguided Zealots, but as *outward Diſturbers, and Violators of the Peace.*

Our

Our great Anceſtors, were not expell'd Paradiſe, for *Chawing the Apple*: but for the breach of the Precept, becauſe prohibited by the Lord of the Garden: now non-Conforming is the *Forbidden Fruit*, the eating thereof, in defiance to the Church, is dangerouſly Contemptuous, againſt the State, and ſo againſt God; for *Laws made by lawful Authority, are ordain'd by God, and ought not to be ſlighted or diſputed; but Reverenc'd and obey'd.*

Par. 126.

Laws uncharitable or Idolatrous, bind not.

LAws to inhibit Alms, in extreme neceſſity; or to enjoyn Worſhip to *Baalpeor*, are void *quantum ad Deum*, in the Court Above: And not aſtringent to the Conſcience. For humane Laws, which are no more then *formal Aſtrictions, ordain'd for the Political Rule of the People: repugnant to Reaſon or Scripture; are not properly Laws, but Corruptions. As Cuſtoms unreaſonable, are Uſurpations, and not legitimated by Uſage.*

The Law moral, the Transcript of natures Law.

ALL Regencies, though never so rude and Devilish, are founded upon Laws; as *Bars and Boundaries of Native Liberty*: the Ground of those Laws, is the Law of Nature; whose intrinsick Principles we obey, because imprinted in our souls, by *the Original of Nature, the Diety*: now the Law of Nature, and the Moral Law, differ only Notionally; *the Moral Law being but the gloss or Explanation, of the Law of Nature*: Hence all Laws are fram'd in imitation of Nature, otherwise not pleadable at the Bar of Reason. In brief, because mans nature is corrupt, and divers from the Community of nature; these *Artificial Restrictions* of humane Laws, on necessity were devis'd: as *Locks and Bolts upon the Soul, for the Weal of Unity and Peace.*

Par. 127.
Disquisitive Theft.

WHether blinking Sleights, Deluding the People with *Wheedles*, more counterfeit then St. *Martins* ware? *Pilfer-*

Pilfering their Hearts from Legal Forms, be not a Theft of a *more dangerous concern*: then the *ſlineſs of the Peepers*, that ſpirit only the Body, they Kidnap the ſoul: And more Theeviſh then the Larceny, of a Sheep or an Aſs; or a *Clout from off the Hedge*: are Problems that ſink deep, with the Well-wiſhers of Monarchy, and Lovers of Religion.

In Law, to withdraw the People from their Allegiance, is Treaſon: And there's as much Ligeance due, to the Spiritual Law, as to the Temporal: for in Truth they are *Politically Identical*, one and the ſame Bond; the King equally intereſted, and Supreme in both.

Par. 128.

Polytheiſm Confounding.

'TIS a ſure Theorem in State, that Diverſity of Opinions; *lets in Atheiſm, and Shifts off Regality*: And ſtrictly in ſpeculation of State, what are *Wincings againſt Law, and Pawings againſt Prelacy*, but Seditious Practiſes againſt the Crown, and meer Confuſions; which by Law in ſome ſence may be Treaſonable? on this *Preſumption of State* by the 27 *Eliz.* the Romiſh Prieſts are Hurdled and Quar-

ter'd; not for their Prieſthood, but Plottings againſt Majeſty: who holds the Scepter, by inherent Birth-right, or Deſcent of Inheritance. No *Crown-Holder at will, or on Condition*: if his Actings out-skim a Fanatick Scull, or Romiſh Oars; his *Barge in Law, is abſque Compoto, Controulable by none but God:* And in Law, though Proceſs in Eccleſiaſtical Courts and Temporal too, are not in the Kings name: However they're the Kings Courts, and the Proceedings are for the Crown.

To inſtance theſe *Droitz Royaux*, or Regal Rights, by an Example.

Every Leet or view of Frank-pledge, holden by a Subject, is kept in the Lords name: yet no Student at Law, but knows it to be the Kings Court: many Subjects hold Courts of Record and other Courts; yet their Proceeds muſt Conform with the Law Royal, and National uſage.

SECT.

SECT. XVIII.

Par. 129.

Severity no unadviſed Precept or Club-Law.

IT will be objected, that Chriſtian Laws, are not intentionally *Newgate Tyranny*; that is, Chains and Fetters: but Silken Yoaks, *Rules written by a ſoft Hand, and eaſie Finger*, and ſhall ever be taken Favourably: with ſome latitude of mildneſs, *as to the Darling of the Soul.* As the Statute of *E.* 3. that prohibits Relief, to a *valiant Beggar*, able to labour, on Pain of Impriſonment: ſhall not be taken literally, or in Extremity of Juſtice: But according to the *Feature of Reaſon, and the Spirit of Charity*: otherwiſe the obſervance, may prove a greater Bondage, then that of *Tripolee*, or *Tunis*; *more then Homicidial, even murdrous.*

Poſito we meet this lazy Rogue, or *valiant Beggar*, on the midſt of *Salisbury-Plain*; in the *Nones* of *December*, or *Calends* of *January*: Remote from Hovel or Buſh, in ſleeking

tert

tert Weather; the Air more piercing Cold, then in *Ruſſia* or *Greenland*, enough to engender Chryſtal: Pitifully jag'd and torn, ſo Back-beaten and Belly too; near famiſh'd, more then one leg in the Grave: without a noggen ſhift, or even a Patch, to cover his Carkaſs, or a ſcrap to ſuttle his Panch: And afore this *Sturdy Villein*, or *Incorrigible Rogue*, can probably get to a Barn, to rooſt in; or a Cruſt to Knaw, He muſt periſh: now if one out of Pitifulneſs fodder, this *filthy Loyterer, or dingy Shab*; with Offal or dry Crums: on Deſign only to ſuccour his Rogueſhip, from the ſharp Stings of Hunger and Cold: taking this *fuſty Lob, and poyſoning Lout*, but juſt before the laſt Gaſp, e're He be quite gut-founder'd and Defunct: to prevent his Funeral in a Ditch. Whether this can be a Breach of Law, and ſo an Offence in Conſcience, is much doubted.

Laws how Expoundable.

'Tis ſaid ſpecial Pleading, and the Prudence of the Court, on the Intent and Equity of the Law; may do much: It muſt be granted, that ſuch *Expoſition, muſt ever be had of Laws; as not to permit them, to be Eluſory*: in Expoſing them to Mockery

ery and Contempt. And that *Conditions are taken ſtraitly in Law, without Equity*; eſpecially made to redreſs a publick Miſchief: And that 'tis *malum Prohibitum*, a Poſitive Law, then a *conceſſis*, the Breach *malum in ſe*, and ſo not juſtifiable in Conſcience: in that Magiſtracy is reſiſted, which according to the Apoſtle, is *Damnable*.

Thus Regularly *whatever is Prohibited by Law, is forbidden by Conſcience*: otherwiſe Laws are meer Cobwebs, to be ſwept down at Pleaſure: as Ridiculous with ſome as the Dance of a Gooſe.

Par. 130.
All Deſtin'd to Induſtry.

IF Bread muſt be earn'd, by the *Sweat of the Brow*, which is the Precept Divine: in its proper Colours without a Paint, the very Intent of this Law: that is, that thoſe that refuſe to work, are *graceleſs Lobs*, worſe then Rogues, *even very Brutes*; and ſhall not eat: on this ground may Equity and Charity too (by *Solons* Scale) with other Reaſons of State, be well thruſt out of Doors: the Law ſtrictly obſerv'd no *Dureſſor*, and the fool-handed Almner that gives but Leavings,

to

to the *vaging Mendicant*; legally *Dureſſed*, and thrown into the Hole: with good Allegiance to Conſcience. For in Law *Negative Statutes bind* ad ſemper, *and ſhall ever be taken literally, and excluſively with the Strickteſt.* But not with that cloſeneſs, like a dry verbaliſt, in pumping after Froth; meer words: for the beſt Paraphraſe in Law, is *Conſequence of Reaſon*; and not the Bark or outward Rind, the letter.

Reaſon the beſt Interpreter of Law.

For Inſtance.

If the Sheriff return a Reſcous againſt A. and B. by Baptiſmal names; without heeding the deſcriptive Statute: an outlawry will thereupon lie, without any further Additament.

A more home Caſe, to lopping *Scruplers, dagger Reaſon*, and not to be bottom'd by a Feſtraw.

If A. ſtrike B. the firſt of June, the ſtriker for a ſmall ſtub of Gilt; (through the Intercedings of Friendly Natures, to ſkreen his Fault and ſecure the Event) is par-

pardon'd the ſecond of June, all Miſdemeanours: then made ſafe; out of Gun-ſhot.

The third of June the Bell Tolls for B. then A. ſtartles: but the Ringing out, puts him into a panick Quake; leſt he pay ſauce, for his Pot-valour.

But in Law, He's more afraid then Hurt: for by the ſecond of *June*, by the 13 *Eliz.* the Felony was pardon'd: in brief, *Niceties and verbal Extremities are no Favourites of Law.*

Par. 131.

The legal Diſtinction of Rogues.

BUT to return to our good Skim-Devil, or as the 39 of *Eliz.* calls Him, *dangerous Rogue*: theſe *ranging Beagles*, or *louſie Vagrants*, are diſtinguiſhed in Law, into Rogues of the firſt and ſecond Degree.

A Rogue of the firſt Floor, when an iron piping Hot, hath inch'd his Luggs: to be baniſh'd, or Committed to the Gallies. By a latter Law, to be branded in the left Shoulder, with a Roman *R.* as *the Notary of his Ranging.* His Shaging on in

in languiſhing Inſolence, is ſtil'd in Law, *Incorrigible*, or a Rogue of *the Second Story*: to undergo a luſty ſwing at *Tyburn*, to be ſecur'd againſt the Pity, of Phyſick or Charity.

Par. 132.

Relief to Lazineſs the worſt of Profuſeneſs.

NOW Relieving this *wandering Villain*, or *Roguing Infidel*, cannot be *Caſting Bread on the Water*, but more Profuſe then *Epoſtraciſm*, or mony Duck'd or Drak'd: for in nature; Conſequently in Law; *a lazy-bone Shagrag*, *or Gally-Slave Counterfeit*, of an able ſane Bulk: that will neither Row, Plough, nor Cart; hath defac'd the Divine Image, attainted his Soul: And his wilful Attainder, forfeited his *liberam legem*, all Immunities and Eaſements in Law and Nature: Render'd Himſelf even unworthy the Sun or Elements: And after a Turn at *Tyburn*, fit *Carrion for the Crows*.

Neither is this Sentence over Tart; *unbecoming a Chriſtian Tribunal*: for the Image of God, Conſiſts not outwardly in Humane ſhape: But inwardly in the Functions of the Soul, to wit, Induſtry, Piety and Reaſon: if theſe operations ceaſe

Ceſ-

Ceſſat Cauſatum, the Priviledge of the Divine Eſſence is loſt: And the Luggage of Bones and Fleſh or ſemblance of Humanity: which this Rambler or foul Lubber, ſhags about with; more regardleſs then the out-ſides of dumb Animals: the one affording ſuſtenance, the other the Cauſe of Famine. For *without labour our Pilgrimage here, cannot be perform'd; with the Benefit of the Heavens, and the Inſtallment of poſthume Glory.*

Relief then of this Canary Impudence, or gabering Land-leaper; doubtleſs is the *worſt of Prodigalities*: Victualling his Camp, but foſtering a Roguery Errant; and ſo *Cramming his Gob*, *Cauſa Cauſati*, guilty of the Vagabondage.

Moſt Laws for Puniſhing Rogues and Sturdy Beggars, were Repeal'd by *1 E. 6.* and the 39 of *Eliz.* by the *7 Jac.* and ſo the Law ſtands at preſent: which is ſharp enough if duly executed.

SECT.

SECT. XIX.

Par. 133.

Unpractical Actings ill Presidents, and Dangerous to Resolve.

BUT to leave this *loutish Patchcoat*, in his Swinish Ramble; to mump upon Acorns: by the 2 *H.* 6. I find a great Peer Condemn'd, without Arraignment or Answer. The like in 32 *H.* 8. one Attainted (though living and forthcoming) of H. Treason; without being so much as call'd to Judgment: The Legality whereof was scrupled, and Demanded of the Judges; whether the Act were void or no. With some Pause they adjudg'd it Perilous, and of *bad Example to Inferiour Courts*: But all Agreed, if Condemn'd by that *all-Commanding Court*, 'twas Indisputable: And it could not afterwards come into Doubt, whether he were call'd to Answer or no.

Though by *M. Ch.* and the 5 *E.* 3. 28 *E.* 3. no Condemnation ought to pass, without a *quid feceris*, or all due Proceedings at Law. The

The like caſe was very Hard, as ſome conceive, againſt the *late Favourite*; for Accumulation of Miſdemeanours, to take away his Life: Degrading and Diſgracing had been Severity Enough, for an *Accumulative Crime*. And truly by the Proceedings I do not obſerve any flat Treaſon, clearly Prov'd: But where Extremity of Paſſion, *inſir'd by malice*, is the Proſecutor, and ſole Proof; there little of Juſtice can be expected.

Par. 134.

Unlawful Acts Executed, become Lawful.

THus in Law *quod fieri non debet, that which ought not of Right to be done*, Factum valet, *yet done*, *'tis Good and of Force in Law*: The Civil Law Principle harps the ſame Tune.

As by a Deciſion.

A ſlave running away from his Maſter, fled to Rome, and there (his Condition unknown) arriv'd, to the Dignity of Prætour.

Two Queſtions.

1. *Whether he were truly and lawfully Prætour: a Bond-man being uncapable of that Office.*

2. *Whether all Acts and Decrees, made by Him, were of Force and Binding.*

Resolv'd in both, *Quod Tenent facto.*

1. Though the Chancellor was Promoted by Error, the Office not void.
2. Therefore the Decrees very Forcible and Just.

Par. 235.

The validity of Prohibitible Acts.

TO unlock the Maxim by an Instance at Common Law; to Conscience very Bull-beef, as tough as Whitleather to *Common Reason*, and meer oppression.

As by a Case.

If J. S. be Disseis'd of Black Acre, the Disseisor aliens: the Alienee knowing of the Disseisin, ex Animo, to bind the Right: obtains a Release, with Warranty of an Ancestor Collateral; Conscious too of the Tort: the Warrantor dies, the Warranty descends on the Disseisee.

Now whether the Title of the Alienee be good to the Tenderling in Conscience, is a a Qua-

a Quære; beyond Diſpute in Law 'tis in-defeaſible and clear.

Becauſe this Caſe is ſomewhat Opacous, very Duskiſh and Dark; to moſt but Lawyers.

For an eaſier Inſtance.

If a Woman Covert, for Dread of her Husband, levy a fine; if declar'd 'twill not be Accepted: if paſt, after the Husbands Death, unlacing her mind wide open: that 'twas Compulſory and by fraud, ſhall never reverſe her own Act; that is, annihilate the Feoffment upon Record.

The like uſeful for the Vexatious entangled in Law.

The Sheriff at a private man's ſute, on Requeſt to open the Door, and Denial thereof: cannot break open the Houſe to execute any Judicial Proceſs; but he's a Treſpaſſer: yet if Execution be done, 'tis good.

Confiſcation without any Crime Committed.

For Wreck at Sea, *the violent Event of*

Tempeſt and Water; the Goods to be forfeited, 'tis to afflict the Afflicted: powring Bitumen into the Wounds, to inflame the Sore: ſo if *J. S.* be ſlain, with the Sword of *J. N.* the Weapon as a *Deodand* is loſt: yet no Crime can be aſſign'd in *J. N.*

Par. 136.

The Guiltleſs Mulctable for the Guilty.

IN Law one ſhall be beaten for another's Stroke; for if a Stranger Commit waſte in the Tenement of Tenant for life; *the Holder for life*, ſhall ſuffer in a *Devaſtavit*, or Action of waſte: according to the Maxim, *Tenants by Act of Law, ſhall do no Waſte, nor ſuffer none to be done:* So ſhall the Maſter be wrung, and muſt be Reſponſible, for the uneven Steps of the Servant.

The Lord anſwerable for the Hireling.

For Example.

If a Servant through negligence burn his Maſters houſe, and the Neigh-

Neibbours too, the Maſter is oblig'd to make reparations.

The like by the Civil and Common Law, of an Inholder, if a Traveller be robb'd by his Servants, or Gueſts, though againſt his will, and privity, yet he muſt anſwer the Damage.

At Common Law by the 22 of *H.* 6. the difference is very rational, that if a Gueſt take another to bed with him out of courteſie, without the Intreaty of the Hoaſt, and be by Him, or through his Treachery robb'd, the Hoaſt is free; but if on the requeſt of the Hoaſt he lodge with him, the Law is otherwiſe.

To illuſtrate this more evidently by a Caſe.

Lord and Tenant by certain Rent, the Tenant Ceaſes for a year; then the Lord grants ouſter his Signiory: And the Tenant ceaſes for another year.

Here the Tenant is Culpable ſufficient, yet Juſtice cannot hit Him: being *Law-free*: And neither ſhall have a *Ceſſavit*.

Conſcience meaſurable by Law.

A cloſer Caſe, to All, but Students, very Rare and Incredible.

L. **mortally wounds** P. **on the Deep or Main Sea, with which wound** P. **Lands at** Dover, **there languiſhes and dies.**

Here's apparent Felony, if not Murder; and by Law Death: yet L. in ſpight of Juſtice, will not care a Button for the Homicide: for ſome think no Law can attach Him: no great Juſtice with the ſhivering Conſcience, that Murder ſhould go unpuniſh'd.

Par. 137.

Sinderiſis the Divine Faculty of the Soul, Inhibiting Vice and Injuncting Virtue.

THus *the Monitor of the mind, or Lanthorn of the Soul, Conſcience*; after the definition of a great Lawyer; is but the *Law of Reaſon*: for that it reſembles and miniſtreth the notions of Reaſon, implanted in every reaſonable Creature: let's give it a more beamy ſtile, and call it the

En-

Envoyée from Above; or *Lidger of the Soul*: Private Conſcience, muſt ſtoop to the *National Conſcience*, which is Law: And natural Reaſon, to the *Regulated Reaſon*: the Statute of the Realm.

As briefly by a Caſe.

If Titius bid his Bravo, examine the Pockets of Sempronius; on his Journey to Briſtol Fair: And he acts this Braving, Burglarly in Cheapſide. Conſcience may Conceive the Encitor Principal, but the Law not even Acceſſary.

A ſtranger Caſe.

J. at Stiles Conſpires with the Huſband to poyſon the Spouſe: to effect the Deſign, furniſhes him with Poyſon: the Huſband tempers it with Syrup, and gives it, to the Wife to Eat: who neſcious of the Poyſon, gives it to an Infant; who Eats thereof and dies. Here's plain Murder: yet in Law, *J.* at *Stiles*, not even Acceſſary.

This Case is to many very rare and wonderful:

For,

If one lie in wait; to beat J. at Nokes; and J. at Downs, coming in the way, be assaulted and slain; though a Mistake and never intended; 'tis Murder.

For the Law couples the Event, with the Intent: and Interprets the mind accordingly.

The same.

If A. out of an old Grudge to B. shoot at him, and C. his bosom Friend, instead of A. meet with the Shot, and be kill'd: 'tis adjudg'd Murder.

A closer Case.

If A. and B. casually meet, and from Words, out of malice prepense fall foul on each other: And a Stranger to part the Affray, to prevent mischief, interposes: And is slain in the Scuffle, or hurt whereof he dies; And 'tis not certainly known, who struck him: 'tis murder in both the Affrayors.

In

In the first Case, Murder (*Animo*) or mentally, was originally design'd; that is, a Person to be destroy'd: the same individual Person, scaping the Trap, another being Caught and Kill'd: one would think, should not vary the Law, as in the other Cases.

SECT. XX.

Par. 138.

Mistakes Examin'd, and the Truth Clear'd.

SOme short-sighted Hungerers after Change, Conceive and Assert; for *an habitual Abuse of Prelacy*, the Temporalties, are seisable and Estreatable; into the *Royal Coffers*.

Mighty news indeed: the Effect and Consequence of Law, Familiar to every Ideot.

Nay when the State, pants under any Exigency; it may be *Spirited* and supply'd, by the Rapine of the Church: *the Order thrown down, and the Lands sold.*

A most Corruptive Witchery, of the

ug lieſt

ugliest Pollution: Brew'd from the very Kennels of Impurity.

But whether the Temporals, for *Personal Crimes* or *State Indigence*; may be *pleno jure*, or in Purity of Justice; Transferr'd unto a *secular use*: and thereby the Function quite cashier'd.

They offer not the least colour, out of Scripture, Authority or Reason; in Proof of this Desperateness.

Par. 139.

The Mistaker lost in his own Maze.

IN Law, if the Church be Endow'd, with a Chalice or Bell: the Donor cannot at will, or if Abus'd (without Sacriledge) Defeat or Recall the Gift.

The like if one set up an Organ, or Erect a Pew; these *Devout Presents*, are instantaneously Dedicated to the Church. The Benefactor cannot repent of his good Deed; by Taking down the one, or Removing the other, at his Pleasure.

The *lay Property*, like a Church-loom and *Inheritances Executed*; being instantly and for ever, Transubstantiated *into a Spiritual*. For a *Divine Right*; *nullius est in Bonis*, *Knows no Temporal owner*.

For

For Example.

If a Coat Armour (the Ancient Pendants of Honour) hanging over a Tomb, be ſtoln: The Indictment runs de Aſportatis Bonis Executoris, for the Taking of the Executors Goods: But for a Grave Stone, or other Church Standard: pro Bonis Eccleſiæ.

And in Law, the ſtabbing Proofs, are borrowed from the *Right of Entries*, and courſe of Pleading.

Neither doth a *Defeaſance* or Condition in Law; as *Choſes in Action* and Executory, lie in the Caſe: and why ſhould it be otherwiſe, ſince the Abuſers are to be Remov'd and Puniſh'd. And the *Donative Abus'd*, ſetled in better Hands; to perform the *holy Truſt*: the Service of Almighty God.

Par. 140.

Truſts Abuſable and Forfeitable.

AT Common Law, if a Truſt be Abus'd; as what more uſual (Debtees defrauded, and Portions never Pay'd) is the Truſt forfeited?

Agreeing the Breach, and that Deſervingly:

vingly: and that the *Fiduciaries* or Truſtees, muſt reſpond the Damage, to *ceſtuy qui Truſts*, be Accountable to the Truſtors: And if *non habent in ære*, their Eſtates be too Feeble, to make Amends; *luant in corpore*, their Perſons muſt *viſit the Fleet*: and there continue, till they clear their Scores.

2.

But is the matter of the Truſt, to wit, the Debts and Portions, thereby loſt; Transferable elſewhere, for the *Misfeaſance* and Fraud of the Perſon Entruſted?

If the *Simile* do not Halt, but *Dictum de omni*, *ſound on all Four*: which no Ideocy ſo faceleſs to Deny. Surely this railing Head, bound with Schiſm, is Burſt: his Brains fall'n into his Heels, otherwiſe his Pen could not Endite ſo leadenly: in filling the world, with ſuch dangerous Abſurdities, for the *ſupputed Crimes* of the Clergy, to blow up the whole Profeſſion: *quite to Kick off Religion, by Tumbling us Headlong, into a new Chaos of Deformity and Darkneſs.*

To lead the Blind out of the way, is *dirty Morality*; but to wander them in Sectariſm and Diſobedience: Beguiling them with *curriſh Libels*, which by the Civil Law, was Death; is the *Blackeſt Divinity*.

Par.

Par. 141.

Blottings ſham'd and Diſcomfited.

THat a Profeſſion or Trade, muſt be Diſſolv'd; for the *Delict* or Crime of the Profeſſors: Is a Conſequence Illogical and Inhumane.

If a Lay office be neglected and Abus'd, the Office (*by Condition in Law*) is Forfeited: The offender to be Deraign'd, and Puniſh'd according to Demerit.

But is the very Office, for this Abuſer; Deraignable or worthy of Diſſolution? *Non-uſer*, as well as *Abuſer*, in the Officials of a Judge; is without Diſpute a Forfeiture: If the Juſtice be Careleſs or Corrupt, muſt we therefore Exile all Judicatore? throw up Property, and ſuffer Confuſion to rage over us.

If a Biſhop be Faulty, in Executing the Pontifical Duty; is not Deraignment, or Removal, with *legal Caſtigation*; a ſufficient Sentence? But the very order muſt be ſtock'd up, for a Perſonal *Mallfeaſante*.

By this Crookedneſs, Prince and People, the Innocent muſt hang with the Nocent: the whole Government torn to Pieces, for ſome few mens miſdoings.

Par.

Par. 142.

Faulterings of Governours is no Fault of Law.

IN all Ages happily on a narrow ſearch, ſome Biſhops have been Blameable, and Juſtices Corrupt; *à facto ad Jus*, is lamentable Sophiſtry: Therefore Law and Goſpel, muſt both be Renounc'd; Atheiſm and Confuſion, take the Rains: for the wry Actings, of ſome *ungracious Perſons*.

Scriblers Chaſtiſeable.

I'me wounded to my ſoul, that men of *flowing Gifts and Riſing Fortunes*; ſhould detect ſuch an Ebbing, or needineſs of Grace; even inbred Prudence: in ſnaring poor Mechanicks, with dogged Poſitions; *to ſcrat and tare the Church: to the Startle and Diſcomfort of their Fellow-Creature, with the Peril of their own Souls.*

Thus from a *Diſpoſition in none*, to infer a *Denomination in All*; *is Botley Logick*. Becauſe ſome are Roarers, and have Eſpows'd Debauchery; a Catholick Ruine, muſt be Deſign'd for Humanity: for the Male Port, or Goings askew; of ſome *bluſtering Swaſhers*.

Par.

Par. 143.

Perverſion of Maintenance, the Horrid'ſt Perſecution.

Diocleſian is ſtoried, for a Church Murderer, in Killing Miniſters: But not to be ſcal'd, for Bloodineſs with *Julian*; that gave *the Fatal Stab or Death's Wound to Religion*: Taking away their Temporalties, Butchering at one Blow, the whole Miniſtry. By the one, the Church (though mangled) was multiplied: But by the other, at one Stroke, cut off and totally ſubverted.

Blood is a *Crying ſin*, and without a full Atonement, will not be Aſſoil'd here, nor hereafter: To aſſacinate the Body is Murder, but Inchanting mens minds, with Sedition and Blaſphemy: A Crime of a more *frightful Aſpect*; like to the Fable of the Italian Attempt; even to *ouſt* us of the life to come.

Par. 144.

Reprobous opinions not mortal, but too long liv'd, even Deathleſs.

THat Hereſies Condemn'd, Ditch'd and ſtak'd through, ſhould Appear again;

again; is the *curious'ſt Myſtery in Nature*: like the *Craving unſatisfied Element*, what they loſe in one Place, they Commonly ſneak and get in another: And though the Authors go *the way of all Fleſh*; and their opinions ocularly Die, and rot with Them: yet it falls out they are not *Commortal*, or of alike Diſſolution.

Leaving ſuch a ſting, and *Sperm of Toyſon*, ſtill behind; that they Revive and ſprout again, many Ages after; in more dangerous ſhapes then Afore: That the Philoſophers *Revolute year* (wherein the world ſhould come about again) the Interlude the ſame, the Actors only ſhifted: proves no Fiction, but a plain and viſible Truth.

How Reprobates Creep up: why ſuffer'd.

Surely God hath rais'd *ex gratiâ*, out of pure Favour; theſe Factioniſts, *as Goads in our Eyes to keep us waking*: Leſt the Church, Drowſie with Unity; Idolatry might ſteal upon us; like Burglars or night Thieves, and endanger our ſouls.

Par. 145.

None Priviledg'd from Infirmities.

NO wonder if the *Evangelical Light* depart, and Blindneſs Crowd in upon us: The Church thus thumb'd and ſlober'd, with impious Vomitings againſt order: Creating a Theater of Horridneſs, more Dreadful; then the *Fate of Catania*: Though tap'd by a *Bohemian Sufferer* or Atteſted by a *Britiſh Second*: which on a ſtrict Enqueſt, may be Verdicted, *Flaſhes of Pride and Choller*; not *Fumigations of Exemplary Zeal.*

We reverence Church Worthies, whoſe Sufferings improv'd the *Reformed Colony*: for which their memory, as *a Relique of Sacredneſs*, is very Dear.

If holy Combatants, therefore Infallible, exempt from all Carnalities; Coincident to Frailty: is a *quaking Inference.*

They might be *Eſſences*, in one Degree; as very *Drugs*, in Another: There being no Salt or abſolute Spirit of Truth, in this Life; the Heat and Sharpneſs of Paſſion, meeting with Affronts and Hardſhips, might edge them; beyond a ſober Byas, of Goſpel-Zeal; and the Cool Breaths, of a *Saving Angel*: And there-

fore their Reformings, not of that *prolifique Influence*; that we must incontinently quit the Church, and the Star of Prudence: And Embrace their dark Anthems, as the *cleareſt Sonnets of Sobriety and Truth.*

Par. 146.

The pettiſh Revolter, Chriſtianly Admoniſh'd againſt Apoſtacy.

WIlfully, in deſpight, of the *Checks of Reaſon, and Chidings of Spirit*; to ſwerve from the profeſſed Known Truth: Is an Imp of *Apoſtacy Total.* Never getting up to its *Reprobate Mounts*, but ever effecting a fatal Downfal in the Climer. Let me Counſel then ſome Margent-Stuffers, the *Vomiters of Curſed Speculations*; to keep their Venime to themſelves: And forbear Spawning, ſuch *helliſh Whimſies*; to the Deflowring of Virtue, and Strumpetting Religion.

Shineſs Requir'd, in Putting forth, the child of the Brain.

As *Words* are the *Images of the Thoughts*, ſo *Books* (the Calender of the Brain, and *Dial of the Soul*) *Pointing out the inward Man*: There-

Therefore Heads of the *fineſt Mould*, and *choicer Forms*, whom ſome ſtile *Schollars*: ſhould be nice and wary, how they ſend Abroad, infectious Ramiſhneſs; to dirt Religion, ſoyl and ſlaughter too their own Souls.

In brief, diſcreet and modeſt Perſons, for very Reputation's ſake, will hardly bring up their Iſſue reprobately: But if deſperately Diſpos'd, Contrary to all good nurture and Manners; they will be Aſham'd to ſend them out, and ſcarcely own them.

The like of the *Intellectual Off-ſpring*, as of the Corporal: All but Crazy-brain'd Virtuoſo's, *meer Blurrers*; will hate and deſie, to father any Progeny, but what's Perfect: and *Conſentaneous with Civility and Law.*

Seditious Scriblings blot the Soul.

In fine, at the *great Day*, a ſingle ſheet of Conformity, Compos'd in Charity; will inherit a *larger Manſion of Glory*: Then Voluminous Tracts, ronk of the Comedy or Satyr; againſt Church or State.

Par. 147.

Extraordinary Acts not Imitable.

THat *David* did eat of the *ſhew-bread*, and our Saviour of the Ears of Corn, at the *uttermoſt Pinch*; to avoid Famine: is not to de drawn in Preſident, to juſtifie Sacriledge or Rapine. The one was an *Humane Diety*, and the other divinely Inſpir'd, or *Miniſter of Heaven*: and might act more Tranſcendently then Carnality now adays, ought or dare to imitate.

Beſides 'twas *Neceſſity*, which Advocates cannot reſtrain; but *legum Vincula irridet*, breaks through the ſtrongeſt *Faſtneſſes of Law*: that neceſſity in *Epikay*, by the Rules of Extremity; might vacate the Propriety, and legitimate the Act.

But to ſpeak ſtrictly, according to the *Moſaical Indulgence*, and the Law of Nations: 'twas neither Felonious, nor even Treſpaſſable; and ſo in a manner Lawful.

Neceſſity conſiderable in Law.

'Tis a Topick in Law, *that this ſwadling of Extreams*, neceſſity; creates a Priviledge or Indempnity, *quoad Jura Privata*, againſt *private Bonds*: Therefore in Defence

fence of life, ſome ſay Alimony may be made Bold with; without Breach of Law, Municipal or Moral.

If a Priſon caſually happens on Fire, the Flight of the Priſoners, is neither Eſcape, nor Breach of Priſon. In caſe of an Aſſault, in Preſervation of Life and Limbs; *to keep in a whole skin*: one may fly over anothers Ground, without the Riſcoe of a Treſpaſs.

Hence the Conjunction and neceſſity of obedience, between Baron and Femme; in Felony ſhall Excuſe the Trull, from being Principal or Acceſſary: In Judgment of Law, having no will; that is, during the Coverture, no free Agency in her ſelf. But wholly *ſub Imperio, under the Rod*; to moſt Intents in Law, much Inferiour to the ſtate of an Infant.

In brief, by *Fogaſſa*'s Caſe, this *imperious Governeſs of Humanity*, neceſſity; is very Abſolute and Lawleſs: And will diſpenſe, even with the very Letter of a Statute.

Pety Larceny Condonable in Conſcience and Law.

But the Gathering an Apple, or a Grape, will not warrant Larceny: Though by the Law of *Moſes*, it eſcape the Judg-

ment of Thievery. In Conſtruction of Law, becauſe of the Implicite Conſent, or tacit Perſwaſion; that the owner will not be diſtaſted at ſo *ſleacy a Damage*: And ſo Intentionally, and Conſequently in *Sereneſs of Juſtice*, no Theft. And hence the Law of Nations did indulge a Traveler, to take ſome Grapes, to relieve his Hunger, but not to Carry away: But the Pernancy of Taking, when gather'd by the owner, or to his uſe, as *Chattels ſever'd*, may alter the Caſe, and amount to Felony.

May this juſtifie a *Backberond*, or Common Thiever; with all Lewdneſs and Wantonneſs of Heart, meerly for Spoil and Lucre, to rob Orchards, and waſte Vineyards? We read that *Iſrael* Robb'd *Egypt*, and *Eliſha* ſlew the Mockers; will this warrant Stealing, or Murder? as Adlely can the former Caſe, be urg'd as a Preſident, to inthral or deſpoil the Church: to ſtrip her of an Eſtate, Ratified by Law.

Ingratitude no Venial Sin.

I'me tormented, ſome manumitted Students, void of Thankfulneſs; *the nobleſt Predication of a Gentleman*: ſhould forget

get their Manumiſſion and Pardon, to merit the Cenſure of Aſcendants from the Dog Star; for *their Shoving and Snarling againſt Law.*

SECT. XXI.

Par. 148.

The Miniſters of Devotion, by the Miniſtrels of Sedition, Tabered down: As the Dormitories of Owls and Gorguts.

THat the holy Tabernacles, or Religious Houſes; were thrown down in *furious Times*: Are not Paths that we muſt neceſſarily tread in. However I ſhall not ſcruple, the Sageneſs of thoſe Footſteps; becauſe Affirm'd by Law. *Diſtingue Tempora*, Ponder but the *Touchineſs of ſome Times*, and their Actings not ſo *Oraculous*; as to be *Querpo Juſtice, and Picquant Patterns.*

To judge of Colours by an half Light, or Commonly as ſome do, in the Dark, or *Miſtineſs of Humour*: implies Feeble-

neſs of Judgment. A Diſcuſſing altogether Fallacious, and no way ſatisfactory.

Par. 149.

Voluptuouſneſs not the End of their Erection.

THat Monkeries and Frieries, became Luxuriant, and a By-word to Sanctimony: And ſo digg'd their own Graves, cannot be Deny'd. However the Deſign (by the 35 *E.* 1. *apud Carliolen*) of Founding thoſe ſecluſe and ſolitary Enjoyments; without Doubt was not at all *Voluptuous nor Owliſh*: But with much Stanchneſs of Wiſdom, and moſt Divine.

Reaſons why Monaſteries were Erected.

1.

As Colledges of Rules and Retiredneſs, to advance Learning and plant Devotion: to fit the Clergy, the better to purge and purifie the Lay Soul: the ſafer to Inſure *it to Heaven.*

2.

To declaim inceſſantly for the Church; to keep Centry for ſecular Souls: Continual Watch and Ward, for their Spiritual Concerns. *That were clog'd with worldly Slaveries, and could not ſo aptly Mediate themſelves.*

3. To

3.

To be a Pharo's *or Blazing Stars of Holineſs of Life; not Sleepers or Chambering Bubbers.*

4.

For the Retirement of great Spirits, *wearied out with publick Toil: to withdraw from the Drummings and Broils of the World: To wait for the* nunc Dimittis, *or Call to the other Life.*

A Cloiſter an apt Counting Houſe for the Soul.

For after we are mounted, to the *Alps of Honour: the great Ends* that we are born for, being Attain'd; in ſerving the Prince and Countrey: even *Achilles* being not Death-free, we muſt to Duſt; the Shooting of that Arrow, being uncertain; to arm againſt its ſtroke; the next and proper Flight, is *Solitude*: to go off in Peace, in Contemplating *the Sphear of Glory.*

No Aiery of Dormice.

For this the devout Fathers of the Church, retir'd to a Monaſtick life; *to Compute their Frailty*: to ſet All even for the other World.

Par.

Par. 150.

Dronery no Founder of Seclusories or Academies of Sanctity.

THus doubtless the End, of those *Religious Anchorisms*, or *Cells of Piety*; was most Angelique: not droniſhly ordain'd, as *Hives for pot-bellied Buzards*, or *Dortours for Swill-bowls*: But as *Seminaries of State*, for the Propagation of Holineſs, and Improvement of Learning.

That the order was Criminous, and ſo deſerv'd the Axe; becauſe the officiaries, were Droniſh and Diſorderly: doth not weigh with ſome. The *Abuſe* (in Law) *cannot Vitiate the Uſe*; for then Frontiniack and the Friqueezes, muſt be Baniſh'd the Table; becauſe often Abus'd through Intemperance.

Reaſons why Thrown Down.

But the Exceſs of *Implicite Zeal*, heaping mountainous wealth upon them; which in Time might have abſorb'd or gulf'd up the whole Laiety; and their own Droniſhneſs neglecting their Office: with that *Reaſon of State*, very juſt Diſſolved them; is a *nemine contradicente*, *Agreed by all Hands*.

Par.

Par. 151.

The Diſanulling juſtified in State.

'TIS the Doubt of many, eſpecially of Divines; whether the Poſſeſſions be ſtill *Teneble in Conſcience*: I'm clear in the Affirmative.

1.

First in Law: the Converting them into a *lay-Fee*, was no Chimney-Corner Act; the Off-ſpring of Paſſion or Infidelity: but the publick Judgment, or full Debate of the whole People, pronounc'd in Parliament: Adjudging by wearied Experience, the Droning over notorious; and the Church cloyed with *Superſtitious Luxury*: which render'd their Office uſeleſs and Abominable. Being too great an Engroſſer of the Temporalty, *beyond the Cure of Viſiting or Purging*: ſo the Depriving or total Aboliſhing, no Infeudations of Rapine or oppreſſion. It being the very ſame Power, that Created them; that Diſanull'd them. The Law that gave them a Being, without Injury to Church or State, might likewiſe Diſſolve them. And we are not to Conceive, the leaſt Prejudice imaginable againſt their Inactings: being Preſumed, no ſober Perſon in his

his right Wits, will ever wilfully wrong another: nay wittingly deſtroy his own ſoul. For ſo had it been, were not the Demoliſhing, neceſſary and Civil.

The Diſſolving maintain'd in Conſcience.

2.

For the Niceneſs in Divinity: how a Spiritual uſe (without violence to Conſcience) can be Tranſmuted, into a Temporal; Contrary to the Will of the Donor: is a Demurrer that ſticks with many, of ſingular Parts. But thorowly underſtood, there's no juſt Cauſe of Scruple. *A Surfeit being better ſpar'd then continued*: therefore the Taking them off, *an Act no way Dolorous, or Inconvenient.*

The Worſhip of God, conſiſting not *wholly in the Eſtate Spiritual*: the good Management of the Temporal, doth no leſs glorifie him. For if that Faint, the other will hardly Flouriſh: ſo that there's a neceſſity, to uphold the one, to ſupport the other: And we may diſcharge a good Conſcience, very liberally, to the *Inſtructor of the Soul*; as much as Heaven doth require: without making him an Idol (like the Dotage of thoſe Times) in Offering All we have; to *purchaſe a Kiſs*

of

of St. Jude, *or a ſmile from St.* Peter, and be laugh'd at for our Pains.

3.

Were the Church much Impair'd, ſo Beggard; that an able Clergy, could not be maintain'd: And all Encouragements taken away, to incite Youth to the Study thereof: And thereby the Service of God neglected, and like to fall; or even the *Votaries to Virtue*, at all Damnified: I ſhould Agree the Negative.

But ſufficient being ſtill left (if us'd ſoberly) to propagate Religion: And no juſt cauſe of ſuſpecting, any Decay of Learning: the Remains being moſt fair and Inviting, Means ſtill enough for the higheſt Merit: I cannot ſee, with the ſearch of both Eyes (as the Church now ſtands) what Annoyance, the 27 or 31 *H.* 8. can be, to any intelligent and Loyal Conſcience: that's *a true Obediencer to King and Law.*

The Aboliſhing not Contrariant to Civil Juſtice.

4.

If not Continued Spiritually, why not Reverted to the Right Heirs?

This Requeſt ſeems Plauſible; had not ſo many Centuries paſs'd, that the right Heirs

Heirs (without a Divinour) could hardly have been found out: A multitude of Claims, would ſoon have put in, and the very true Heir, ſcarce have ever been Known: And ſo the Land given back, to meer Pretenders and falſe Owners: Then *the Cure worſe then the Diſeaſe.*

The Infadation of Droveries, or Permuting them to a ſecular Free-hold, warrantable in Divinity.

5.

But had the Inſtitution been ſo Freſh, that the lineal Heir, had been then Alive: and Certainly Deſcrib'd and Known. However the Tranſmutation lawful.

The Giving being Intentionally Publick, and Conſecrated for a general Benefit: happily a By-bag, or ſpare Revenue; that the Heir might well part with, and never ſleep the Worſe: And ſo not originally Deſign'd for Him, but Adviſedly always put aſide by the Giver; for that Purpoſe: The Diſpoſing of the Grant, to another end; then what was Directed by the Grantor: will be neither *Forfeiture nor Fruſtration of the Grant.* Becauſe ſtill enjoy'd by the Publick, according to the Intent of the Giver; the Gift only

only Imployed, to a more needful and better use: then the *Continuance of Drone-ship*, and *slavering the Adored Toe*.

Agreeable with Foreign Laws.

Neither is this any suddain opinion, without Authority; for the Civil Law allows of the Conversion, as Legal and Honourable:

As by *Lysimachus*'s Decision.

Who desirous to live in after-times, charg'd some Lands, to maintain publick Shews: which happen'd to be forbidden, and put down by Law.

Two Questions.

1. *How the Rent should be Dispos'd of.*
2. *Whether not Accruable or Descendible to the Heir.*

Resolv'd.

1. The Legacy could not die, though the literal Use, became Unperformable.
2. Therefore 'twas ordered, that the Magistrate with the Heir, should advise of another way: How the Intent

Intent of the Legator might be gratified.

The Tenure as Durable as other Tenements.

6.

Theſe Poſſeſſions are Commonly Twitted, by our Well-willers, to the *Caſt of Drones*, or *Sleepy Crammers*; to be of a *Volatile and fleeting Nature*: And ſo not to be Enjoy'd, or indeed worth Looking after. Being bann'd with an unlucky Fate, or *Mark of Divine Diſpleaſure*: Therefore ſeldom or never, ſtaying long in one Hand, but very ſwift in Paſſing away.

Sometimes *proving meer Plague-ſores*, Infecting the other Eſtate; bringing All to Confuſion: Therefore ſome *Conceited Heads*, otherwiſe wiſe enough; are ſhie forſooth to Purchaſe them.

Their Twitlings Blown off.

A very weak and falſe Aſperſion and groundleſs: on Deſign by Papiſh Plotters, the *Underminers of the Church of* England; to diſcourage all honeſt People, from Purchaſing; or in ſooth Holding them.

To reſolve theſe *idle Giberings or Popiſh Bannings*; which are as Credible as the Legend

Legend of the Crow, mourning over St. *Vincent*'s Corps; or the Reliques of *Aleppo*. We may ſay of them as juſtly, as of old Granam's *Winter Goblings*, or *Goſſoping Propheſies*: That they're mark'd when they Hit, but never when they fail: The ſame with theſe Lands, when they happen on Sale; a thouſand God-morrows, and jabering Pritlings; muſt paſs: But they may ſtay till Doomſ-day, before any Boaſt be made of their Proſperity, and Luckineſs of Continuance.

'Tis aptly obſerv'd by the ſmarteſt Diſcerners in the *Predictive Deluſions*; where one falls out Right, Twenty miſs: The like of theſe Lands; they're no Cancer, or Moate to fret the other Eſtate: *Tenantable under an ill Deſtiny*; for if true obſervation were made, Twenty for one Continue. All other Eſtates are generally as Tranſient, as Haſty to be gone, if care be not had to the main Chance: And as often Actually made away as They.

Prebendaries of Learning and Devoutneſs neceſſary.

7.

To ſhut up this Cloiſter'd Diſpute; 'tis the Conceivings of ſome, that had there

been fewer, and those no *garsey Crommers, or Cloistering Snorers*; but better Disciplin'd and more Actively Dispos'd; in Virtue and Piety: The Continuance might have been Profitable.

I have spoken this, in Vindication of *the Liberty of* England, the Law: to stop the mouths of malicious and ignorant Detractors, that run away with a fantastick Prejudice; without searching into the Reasons and Grounds thereof.

Though I may expect, for writing thus Evenly, without cloaking; or clouding the Integrity of State: a badder Curse for my Pains, *then the Confirmation of tempestuous Weather, with the Wind Continually in my Face.*

SECT. XXII.

Par. 152.

Upbraidings against Church Lands.

THE Ecclesiastical Revenues, are much upbraided by the Anti-Prelate; *the Ruffler against Monarchy*: As the lavish Alms of the Blind, in *dark Times*

Times. No better then *Pious Cheats*, worm'd out of the Simple Devout; somewhat to Alleviate or take off, the *Dureſs*, or imaginary Flames of Purgatory: to glide to Heaven on *Dowley Terms.* And *Teſtaments fram'd by Colluſion are void.*

In Charity we Adjudge them, as the frank Endowments of well-intended Zeal: for the Maintenance of a *pious Uſe.* Though happily Purchas'd by ſome *Sprinklings of Fraud*; the general End, of the Donation good.

At Common Law, though the Words of the Teſtator cannot be ſatisfied; which is frequent in many Caſes: *the Intent being Purſu'd, the Expoſition Safe and Binding.*

Now in Law, the Intent of the Legator Juſtifiable; though the *Modus* and Judgment of the Legacy miſ-applied: which the Canoniſts agree may be Rectified, for the *Support of true Worſhip.*

And in Law, *Bequeſts to the Church*, muſt be Determined ſoly *after the Law Canon*: And not after *lay Conſtitutions.*

Par. 153.

Lamponings againſt the Perſon of Prelacy.

ALlowing the Bequeſt good: yet *Adepto fine ceſſat Motus*, *the Race being*

won, the Quarry once got. Adieu to all Piety and Learning, Epicuriſm and Pride muſt then take Place: *Charity and all Prelatical Worthineſs thrown out of Doors.*

The Lamponers Silenc'd.

If not Libellous; this is a ſore Blur indeed: worthy a thorow Scanning and Amendment. But *with the Churliſh, nothing is Chryſtalline but Blood-ſhot*; aud ſince we cannot *eſtrepe*, or muzle Malice, nor Martingale Folly: Aſperſive Mouths (*the Spowts of Slander*) with the wiſe, are no Scandal.

Merited Advancement.

1.

For their Promotion, 'tis not *per Saltum*, at one Jump, or *Unadviſed Leap*: But Gradually with the uniform Vote, of the *Guild of Learning*: neither without the Expence of much Time, and Charge, can they arrive to a very Degree in the Profeſſion. And afterwards through wearisom Study, when *Seraphically Accompliſh'd*; 'tis not their own Seeking, but the Pleaſure and Penetration of Majeſty, according to the 25 *H.* 8. and the 1 *E.* 6. to diſtinguiſh

ſtinguiſh of their Gifts: whether fit to be Dignified, with the Call, of *Cuſtodes Animarum*; *Chancelours of Souls and Spiritual Guardians.*

2.

Before this Providence of *Conge de Eſlier*, doth uſually ſalute them: through long and irkſom Studiouſneſs, they're Gone off, their Spirits near waſted: Being juſt but *moving Skeletons.* Preferment comes as late, to render the Abode Felicious: as a *Pardon after the Head is ſever'd.* Retirements then from active motions, are no way wonderful.

SECT. XXIII.

Par. 154.

Literature Honourable,

NOtior Virtute, eſt Potior Honore: Honour is ſo Riveted and cloſe Entail'd on Virtue; no bartrous Act of Fine or Recovery, can dock or deſtroy this Right: A Principle in Favour with the moſt Barberous. Can Learning be too much Laureated! thoſe who by

wearied Study, are Preferr'd *out of Merit, not of Grace*; to the State of Spiritual Governours: According to the Apoſtle, *Thoſe of Berea were nobler then thoſe of Theſſalonica.*

I hear no Divines, *Moot* the Grandeur of the Law; for ſome Advocates to *bolt*, the Dignity of the Church: Is a great *Feofayle*, obnoxious to Piety and Scholarſhip. But for their own Coat, to beat ſo Venimous a Peeke; Renting the very Bowels of Learning, to rout the Church: is more then Viperous, even the rudeſt Silline ſs.

Par. 155.

The Peerage Requiſite.

AS there are ſeveral Rounds, or *Orbes of Dignity* in the State; for the Honour of Magiſtracy, and the Encouragement of *publick Spirits*: The like Comelineſs in the Church, is moſt neceſſary; for the *Reverendneſs of Religion, and ſemination of Learning.*

A mingle-mangle in the Church will cauſe an Hotch-potch in the State.

Nothing more unequal then

then Equality; is an Axiom in State: good Revellings, that Gentlemen and Schollars, ſhould turn Anticks and Levellers: for Equality in the Church, will invert the whole Fabrick; turn every Intereſt upſide down, and do the Buſineſs. Fraternities meerly Lay, as well as Literate, muſt be *Recoup'd* or brought even: Maſters and Fellows, Ancients and Punies, All of a Knot. Neither will the Morrice-Dance of this *Zealous Tumbler*, reſt there; we muſt imitate the Church, we cannot follow a ſafer Light, then the *Caſſiopæa of Heaven*. And then God b'wy to Monarchy, this *levelling Sythe*, will mow all down: the Gentineſs of Lacque-boys with bare Heads and Pages: with the Gaudineſs of red Ribbons and long duſty Trains; uſher'd or Pag'd up: are meer Giggery and mimical Expence. Nay the Streamers of Sovereignty, and Enſigns of Greatneſs, of *White Staves and Blew Garters*, with the *Jeſſe of Honour*: And Swords of State, with Maces of Majeſty, more uſeleſs then *Bartholomew Babies*. In brief, Lord and Tenant, King and Vaſſal; All whiff'd off in a Snuff, to bed and board in *Hercules* Den.

Par. 156.
Why Created Barons.

WE do not miſtruſt, *but in Abraham's Boſom, there will be Fulneſs of Bliſs, Reveal'd unto All*: However we may Conceive, and that rightly, of Hierarchies, or *Ranges of Beatitude* among Angels; and Priorities doubtleſs we ſhall find among Saints. *A Series of Glory even among the Stars.*

Hence hath our Law, created *Spiritual Prehiminence*; not as a lofty Gayety, to *Lord it above humble State*: but as an Honorary and Requital, for Reverend Parts. To invite and likewiſe oblige the Laity, to diſcharge readier obedience; to Eccleſiaſtical Juriſdiction: Magiſtracy being ever more Honoured, if Grac'd by handſome Quality; but too Commonly ſlighted, in abject Condition.

Handſome Splendour, no Pagan Pageantry.

Can we Pay too great a Reſpect, to the *Legate of Heaven*; that has *Curam Animarum*, the *Charge and Curacy of Souls*! unleſs the Soul, be a Romance or Kickſhaw, a meer Artifice, or Feat of Wit; feign-

feigned only to ſcare Fools: And the Legation or Curatorſhip, as needleſs as Poppets and Mummeries.

Par. 157.

Civil Diſtances; not Loftineſs nor Superſtitious Vanity.

BUT ſuch Gaudery is too Drab-like, after the Tearingneſs of the *Tripan of Babylon*: ſutes not with the *Veſtal Attire*, of the Kirk of Chriſt.

If the Diſcipline of the Church, be *Queaniſh*; for Retaining any Rite, that's in uſage with *Rome*: Let's throw away the Bible, if a Roman Pandar! leave all holy Ordinances, if *Babyloniſh*; and turn *Nebuchadnezzars*.

Par. 158.

The Apoſtolical Compeerage not Argumentative.

TO inforce an Equality in the Church, from *a Parity among the Apoſtles*; is a Claſſical Cavil, but no authentick Debating: a Preſident not ſquare with Divinity, or *well-digeſted Reaſon*; Law.

To unblind the world, of this *popular Error*; we muſt conſider the Church in its In-

Infancy, that a familiar Garb was then the likelieſt Means; or powerful'ſt Charm, to win and Convince the Vulgar: in ſlighting the Gayneſs of the world, to appear not as ſelf-ſeekers, for their own Intereſt: But as totally Deſign'd, for the *Converſion of Souls*. Which certainly was then Conceiv'd, the ſtrongeſt Guard, to ſubdue Infidelity.

But when the Church, had got ſufficient Strength and Repute; that Diſtinctions and Precedences were then ordain'd, is manifeſt by *undeniable Record*. For though *Peter* and *John* were Eminent *Spreaders of the Truth*; yet doth St. *Paul* claim his Place, Alledging expreſly, that he was not *Inferiour to the Chiefeſt Apoſtles*.

If no order were among them, then on neceſſity, more then Raggedneſs; even Confuſion: which were foul Profaneneſs and groſſer Folly, to Conceive. Among *the Choſen Ones*, Perſons ſpecially elected, and Aſſign'd by Heaven; as the apteſt Divulgers, of the *precious Myſteries*, and fitteſt *Infuſers of Grace*.

Now if order, that's Gradual and doth imply a Diſparity, or civil Subordination: from this we may infer, an orderly Diſtinction, even with the Apoſtleſhip.

Par,

Par. 159.
Obedience Natural and Commendable.

THE Cuſtom of *England* towards Corporal Parents (which ſome Inveighers againſt Order, account even Superſtitious) is very Worthy: with good Conformity to the Fifth Commandement. Why reverential Diſtance, to *Spiritual Fathers*, or *Tutors of Souls*; entruſted with the Pupillage, of our deareſt Concern: ſhould be *Will-Duty*, and left unpaid, is a Ridleſs to me! Thoſe that neglect the Truſtees, or *the Superviſors of the Spirit*; will render but wither'd obedience, to the Framers of the Body.

Neither is the *Spiritual Peerage*, any freſh Conſtitution; but Coetaneous with Chriſtianity: not without even Divine Rooting. And to *aſſart* or grub up a Plant *of Gods own Setting*: meerly out of peeviſh Pride, *is ranting Divinity*.

Par. 160.
With Heralds no Eye-ſore.

IN Heraldry the *Preſidency of the Church*, no Entail'd Dignitary: nor even a *Perpetuary* or for life, becauſe Degradable:

at

At beſt but a *Dignation Officiary*, and momentaneous; in Ceremony of State, Expiring with the Perſon: Thus no Web in the Eye, if honeſtly Inſpected; affording no Place to the Wife, nor Advantage to the Iſſue: in Truth *No Eclipſe, to cloud Nobility, nor darken the Commonalty.* But a fit Radiancy of State, to approper and brighten both; in preventing the *Owelty*, or beaſtly Parity; which would ſoon ſhut up, out of Prelatical Aſhes.

Par. 161.

The Office Divine.

FOR the Divineſs of the Function: I could never read, before or ſince the Goſpel, of any ſetled Miniſtry; either Prophane or Chriſtian: But what was ſtill govern'd by a Prelate. Neither need I run much on the ſcore, with Humane Authority, to pillar this Poſition. It being evidently Preſidented, by all Church Writers, both Pagan and Chriſtian; principally by the Eloquent Epiſtles, of that *Renowned Reformiſt*: who taught and plainly Enjoyn'd, the Eſtabliſhment of that Juriſdiction, not only Perſonally, but ſucceſſively. Which is even Statute Law to me, that the Office, is not at all,

Jure

Jure Humano, of *Lay Modelling*: but its Nativity Divine, and *Primitively from Heaven.*

To close up the Diss with this Undeniable Truth.

The Pastours of the Church are *Jure Divino.*

But Prelates (*sub Christo*) are the Supreme or Head-Pastours of the Church.

Therefore Prelacy, *Jure Divino.*

Par. 162.

The Inglorioussness.

O Most Inglorious, to make the *Science of Heaven*, the Butt of Reproach, and Subject of Ignominy! But such is the Indignity of this present Age, that the *Freeze Jerkin with the Red Wastecoat*; that are Asinin and even Tongueless, at any Scene but Calumny: start up marvellous witty (their mouths full tipt with Satyrism) at such a Prate. And want not a Sting, *to club their Clinch*; to sulley and sutt: according to the 8 of *Eliz.* *One of the greatest States of the Realm.*

SECT.

SECT. XXIV.

Par. 163.

Temporal Theft an Hanging matter.

IN Law, in the Paultry old French, *Un Denier ou un maile prise de la Robe*; a mite rap'd from the Person on Travel, *invito Domino*, *by Constraint*, is strict Felony. Many other pety Violences (*Animo Furandi*) with a *Thieving Intent*, is no less Capital. By the *Secondary Resolve*, *of Legal Reason*; in Defence of Property.

Neither is Robbery a *Sackber'd*, (like Cut-Pursing) strictly fix'd to the Person: And therefore if a Surcoat, or any other Goods, are Taken overtly and Saucily, in ones Presence: Though not on the Person, *nolens volens*, or as we say, *in spight of ones Teeth*. However in Law, the Tractation or Taking is Felony; the Damage being the same, and the Fear alike.

Par. 164.

Eccleſiaſtical Thievery more Deſperate and Hainous.

AT Common Law, the Felonious Taking of an Hawk, from the Peark, or from a mans Perſon; was Felony: the 34 *E.* 3. made the Finding and Concealment, two years Impriſonment: But the 37 *E.* 3. though without Vervels made it Felony, unleſs the Finder *Maintenant* or forthwith, brought it to the Sheriff, to proclaim the ſame.

Can we think the Law hath not as Carefully Provided, againſt the *Spoliation* of the Church? But that ſhe may be Aſſaulted and Ranſack'd, her Revenues ſeis'd and tranſmuted into a Lay Fee; without *Deforcement, or the leaſt Shadow of Sacriledge?*

To rob the Diety may be Life; but to put Mortality, into a ſmall Quandary or Aguiſh Fit, with Concealing Birds of Prey: Felony. If the one be ſo Direful, by the *Auncel Weight*, or lighteſt Touch of Reaſon, the other muſt be moſt Pernicious; the hainou'ſt Latrociny. Otherwiſe there will be a *Failer of Juſtice*, a Miſchief the Law of *England*, will by no means Endure.

Par.

Par. 165.
Thieviſhneſs Explicated or Unfolded.

ACcording to the Practice of Law, *Theft is the Felonious or Fraudulent Taking away, of meer Perſonal Goods*; which if *Super duodecim Denarios, above the value of two Teſtors*, 'tis grand Larceny: if under, 'tis *Petit*; uſually puniſh'd by Forfeiture of Goods and Corporal Pains. *A Minori*, according to nature, the Diſſeiſing or Depriving one, of an Hereditament or Lordſhip; a *grander Larceny*: unleſs with Stoiciſm, *All Offences are of the ſame Size*; and with *Draco*, *One Pain a ſufficient Executioner*. But *Circumſtance of Fact*, with the *Overture* or notoriouſneſs of the Intent, whether *Treaſonous or Felonous*, in Law Creates a *Majus* and *Minus*, or *Diverſity of Pains*. And ſo *Penalties are ever Commenſurate to the Quality of the Crime*.

By the Civil Law, the Taking up any thing off the Ground, with an Intent to Convert it to his own uſe; is Latrociny: whether the owner of the Goods be known or no, it abates nothing of Pilfering; the Taker is ſtill in Danger of Felony. But if the thing found, prove a *Derelict*, that is, *quite forſaken* or caſt away by the

the Proprietour: Reſolving never to own it more, ſome ſay it excuſes. By the Law of the Realm, there's no *Forſaking*, the owner may claim his Goods when he will: notwithſtanding all Rejectings or verbal Diſclaimings; the Property ſtill Continuing the ſame.

At Common Law, I conceive the *Trover* or Caſual Diſcovery, veſts no Property in the Finder; But as a ſtray it ſhall rather Eſcheat to the Lord of the Fee: or to the King, in caſe the Franchiſe be not large enough, to retain it.

The Law is moſt Curious and Worthy, in this *Publick Good* of Property.

For Example.

If one find anothers Goods, if afterwards they happen to be loſt, or even Damag'd, through wilful Default: the Finder is chargeable to the owner.

If loſt caſually, without wilful negligence; or Committed to anothers Cuſtody, who runs away with them; he's ſaid to be unchargeable. But ſome think the *Committor* muſt anſwer for the Slipperineſs of the Runner: for Repoſing Truſt in a Perſon, of whoſe Honeſty he had not ſuf-

ficient Proof. His own *affected Supineſs*, being the Cauſe of the Damage.

Par. 166.

The Eccleſiaſtical Peace, much Tender'd in Law.

THE Famous Statute, *ſo much Admir'd and talk'd of by popular Judgments*; Enjoyns Primarily and Particularly: that *the Church of England, keep her Rights Inviolable*: *de Circumſpectè Agatis*, ſpeaks the ſame. The one the Redintegration, or *Collect of the Common Law*: the other a Conceſſion of Juſtice, never Controverted.

Weſtminſter the Firſt, is in very Point; which Commands in the firſt Place: that *the Peace of Holy Church be kept.* A Law fram'd by the Tutorſhips of Angels, and will find obedience *over the Gates of Hell.*

Thus *Pax Eccleſiæ obſervetur*, the *Peace of the Church muſt be kept*, is a Theorem in State: And from hence we may infer, that the Spiritualty, is to be had in Equal Tenderneſs, with the Tem-

Temporalty: He that ſnaps from the one, may pull Judgment (as a *Burgeſſor*) *of Life and Member*, from the other.

There's a general Learning at Common Law; that the King is not bound by any Statute, *if not ſpecially nam'd*: for his Advantage he may Concern Himſelf, *ſans Expreſs Noſmer*. But in Acts that treat ſpiritually, Majeſty is ſtrictly bound, *ſans Eſteant Noſme*, though not nam'd. *Religion being the ſtouteſt Pillar and ſupport of the Crown.*

Par. 167.

Lands neither Donable nor Deviſeable.

BY Ancient Law, *Lands by Deſcent*, were not Alienable, without the Conſent of the Heir: But a *Gift to God*, in Expoſition of Law, to a Perſon devoted to his ſervice: 'twas undeniable and Binding without the Heirs Aſſent or Privity: The like at the Civil Law.

As by a Deciſion.

Caius mighty wealthy, and wiſer then to delay, ſetling his Fortune; till the laſt Grone, deviſes his Lands in Alexia, to Chriſt.

Two Questions.

1. *Whether the Will not void, for the Uncertainty or Dubiousness of Limitation.*
2. *If valid: How to be Interpreted.*

Resolv'd.

1. That the Devise was Good.
2. That the Mannor (in Interpretation of Law) was given, to *the Church Parochial*; where the Testator did more Eminently Reside, or usually dwell.

The like Anciently at Common Law, as a Fine levied *Deo* or *Ecclesiæ*, was Good.

As by a Case.

A. devises green Acre to B. for life, Remainder to C. for Life: Remainder to the Church of St. Andrew in Holborn.

By the 21 *R.* 2. I find it Adjudg'd a good Devise: though by the 32. *H.* 8. I doubt much, whether it will now hold Good.

Par.

Par. 168.

Largeſſes of Devotion are Conſecrated Feoffments.

Collatum Clero, Collatum Deo: A Gift to the Church is beſtow'd on God: the *holy Gifts*, the old Legiſts, call *Frank-Almoinge* or Free Alms: And not ſo ſleazily Removable, as ſome *Spangled out-ſides* fain would have it.

Preſents of Conſecration or Grants to the Church, were in *Pearlie Times*, ſtil'd *Church-Cheſſet*: As the Rearings of Religion, but now *Nugatory Endowings*; for that Charity may well be ſpar'd, and Heaven Commanded on cheaper Terms.

By the Devout *over the Water*, for a ſmall Pull; to help the Groners, out of *placeleſs Purgatory*: great wealth is oftentimes Bequeſted. But with us, not a q afforded, to avoid that Gulf: nor even to be Aſſur'd of Heaven.

Par. 169.

Sacriledge the deadlieſt Crime.

BY the Common Law, Sacriledge is defin'd, *Le Larcin des choſes Sacrees, Theft of Things devoted to a ſpiritual uſe*: And

is deem'd, *Rettum Graviſſimum*, the grievou'ſt offence; for which no Clergy is Grantable. Therefore by the Canon Law, *Sacrilegious Thieves*, were Commonly ſentenc'd to *Wild Beaſts*, ſometimes to *the Flames*. To enjoy Religion without a Scourge, is to fancy Animation without the Sun. All Law-Books are ſo full and plain in the Point; to blur Paper, to Replead, ſo clear a caſe: were *Sowing the Ocean, or Fiſhing in the Skie*.

SECT. XXV.

Par. 170.

If the Church be thrown down: The next Lift, will be at the Law.

BUT what if the Church be skin'd, and Learning thrown on the Hedge: the *Thriving Trade*, will be ſtill kept afoot; and the *Effronted Lawyers*, grow Bankers?

This ſurmiſe may come ſhort, of an Handful of *double Guinies*: But how will the Law be acutely Attain'd, without being

ing firſt Grounded with Scholaſtick Breeding? ſo that Property muſt fall with Religion, *both Coffin'd in the ſame Tomb.*

Par. 171.

Law as Spiritible, *or Inſpirable as Theology.*

AND why may not this *Scambling Spright*, enlarge the Inſpirings? And take on him, to *Spew Law extempore*; juſt as faſt as the higher Notion, and more Sacred; to wit, Divinity: He that's ſaucy in the Parlour, will ſcarce be Mannerly in the Hall. *No Difficulty but may be ſhoulder'd, by the Ray or Spark of the Diety; the Spirit.*

I'me ſure with the late Uſurpers, *Bracton* was Fooliſh, and *Britton* an Aſs: *Perkins* full of Crotchets, and meer waſte Paper. Nay the *Legis Alpha*, and *very Textuary at Common Law*, for all the *Gorgeous Elegies*, the learned Expounder gives him: was no more Regarded then a Straw. Every Major General, or Common Agitator, were *par my & par Tout*, perter Lawyers: Deeper read men, and *more cunning to Cleave an Hair*; then the two late *Famous Ones*, *Hobert* or *Dier.*

Par. 172.
The Civil Diſquiſitour.

HOW came ſome bulliſh Clog-heads, by that Dexterity? without all Peradventure, from their *Familiar*; the Cheating Spirit: for theſe Pretenders, were juſt as Blunt and Beariſh as a Cartor: Having never Traded further in Learning, then a Primer; if ſo high Bred. For had ever theſe *white Souls*, been call'd to *coram nobis*, that is, had Juſtice ever Demanded an Account of their Actings; undoubtedly the *Neck Verſe*, would have ſtuck worſe; then the *deluding Apple*, did with our Grandſire *Adam*. And were it worth an *Imprimatur*, I could verſifie and ſay much more.

Par. 173.
The juridical Advertiſer.

A Word in ſeaſon to the Lawyers (to whom I wiſh *all Plenitude of Proſperity*, or Arms full of wealth and Honour) will be more Preiſely: Then *Apples of Gold in Pictures of Silver*; and deſerve a Coloſs Fee. That they daſh not

not againſt theſe Rocks, in Leſſening their own Towl. For Calviniſm under colour of Scandal (like the *Druides* in *France*, which is Preſident enough) will Allay and Engroſs many Brangles, and *take Griſt from the Mill.* And what's this but Popery (that's ſo hotly rail'd on) not *Incognito or in Diſguiſe*: but open Breaſted and drawn in *folio.* For in order to *Dic Eccleſiæ* or Spiritual Cognition; they Interlope in Lay matters, and if their whinellings, be not greeted Crouchingly: And meet more then half way, with a *Scraping Courchy*; of Hat and Knee: *leaden Bolts* will ſoon be Thunder'd againſt them. Plaſters which neither Heal nor Abate, but ever Hurt and *Enrage the Anguiſh.* Pure Romiſh Doctrine, Tranſlated into a *Geneva* Mould; Condemn'd by Parliament, in *E.* 2. & *E.* 3. as Treaſon: That if Majeſty cannot be *Clouted* by Law, then to be *Cobled per Aſperiteé*: Toſſing him to the *Cloven Foot*, ſhall do the Feat.

Par.

Par. 174.

Confinement to the Proper Walks, politick Modesty.

LET Eccleſiaſticks forbear their Fulminations, or *Parchment Pellets*; and keep within their own Purlue, or known Limits: Leaving Civil Miſpriſions, to the *Sages of the Law.* Then ſhall the Church be quitted of Lordlineſs, and the State of Couchancy: *in ſuffering the Croſier to ride too much on the fore Horſe.*

Let me beg ſome of the *Long Robe*, to leave their Reflections; and the Laity their Mouthings againſt Prelacy: For without it, the Law will be Defective; all Cauſes Eccleſiaſtical, not Triable without that Office. As *Mulierty* or Loyalty of Matrimony, general Baſtardy, *Excommengement*, Profeſſion too Anciently: Theſe and the like Regularly, *ex Inſtitutione legis, by neceſſity of Law*; muſt be Tried by the Certificate of the Ordinary. And ſhould this way of Trial be wholly laid aſide, or indeed be but even Diſus'd; the ſequel will be ſtrangely Miſchievous. Many will more then Flutter and Flaſh, with hopes of coming off, without a nip.

In

In fine, the late *Ruffian Times*, when Root and Branch was Threaten'd againſt the Law: are *Garniſhments* enow, to Counſel the Profeſſors; how they part with *le Gardian del Ley*, or *Protector of the Law*: the Government now Eſtabliſhed.

SECT. XXVI.

Par. 175.

Advice to the Fugitive and Frontleſs.

TO draw to an End, I could wiſh ſome freekiſh Straglers, would bridle their Tongues, though their Hearts are Incurable: from Spawling ſuch ugly Malignities, againſt the Womb that Produced them; the Font that liſted them under Chriſts Banner, to the *Blemiſh of the Dicty, and Blacking their own Souls.*

Some are clear ſighted, and can diſtinguiſh between Damask and Callico: And cannot Stray, without a Check of their Diary;

Diary; telling them: *they muſt one Day Audit, for the minuteſt Thought.*

Let me Counſel the Unquiet, or State-Troublers; to leave theſe *Frantick Rangings*, and graſe within the Hedge: *Stoln Paſtures (though Sweet) are Rotting and Conſumptive to the Soul*: Truly theſe outragious *Affray's on the Church*, *look frightingly; as Deſigns to Winleſs the Buskin*, *into an Outlandiſh Nowſe.*

Bravings againſt the Law are Deſtructive.

The loud Crake of *Proſperum Scelus*, is a Slippery Tread, and may break their Legs; And well if they Eſcape with the Top-Member. Let them Take up in Time, leſt they run Mercy quite out of Breath: ſhould the *Ducklings of Zeal*, boggle thus Audaciouſly elſewhere; they would be more then Sentenc'd to the *Gætulian Sands*, to dabble in Mud, or Pick Daiſies: The State would ſend them a *Pair of Shooes*; which if they Refus'd to wear, the next Token would be a *Salamander Sallet*: more then the *Pain of the Boot*, or that of *walling for Fraudulent Securities.*

But for Explaining my ſelf: I will approve of *Tenderneſs of Conſcience*, and there-

therefore by no means Allow, of *Fagetting the Perſon* : only according to the 1 *Eliz. Burning the Purſe, or Racking the Pocket*: the healing'ſt Phyſick for Peeviſhneſs.

Par. 176.

To the generous Stray's. The Cockerers of Faction.

LET me intreat the Equeſtral Order, or Scale of Noble Blood; *to Study themſelves*: 'twas no leſs then the Advice of the Oracle. In the whole Compaſs of Nature, no Creature ſo well worth our Acquaintance; *as the knowledge of our ſelves*: They will then quickly learn, without Parling with Feud or Faction; by the *inborn Tutorings of Honour*: that the moſt unthrifty or tragical'ſt Act, that a Gentleman can Commit; in, the whole Comedy of his Life, is to reſiſt his Prince. And *Flinging and Fluttering againſt his Law; is the unhandſom'ſt reſiſtance.*

Par.

Par. 177.

The Boyiſhneſs of Blundering againſt Settlements.

HAve we not Compromitted our Conſciences, in matters of External Worſhip, to Authority? Have they not Given (on grave Debate) their Judgment Final? And muſt we now mutter againſt our own Act, Reneage and turn *Runnegadoes*; becauſe *the old Truth is Trump, and Falſity gleek'd.*

At this Rate there will be no end of Controverſie; no obedience to Law. In a private caſe, if any oblige themſelves to ſtand to the *Award of a Stranger.* If Arbitrated againſt the Hopes or Intereſt of either: what childiſhneſs from the *Compromittors*, to mumble of hard Meaſure: But non-Complaiſance, ſome Lawyers adjudge very Boyiſh, and moſt Caſuiſts, Barretry.

Par. 178.

To the whole Bunch of Diſſenters in General.

IN fine, let the *Univerſal cluſter of Contrarients*, Ponder but the late Chops and Changes of Government: with the Eſſay

Eſſay of all ways, and *the loſs of the beſt of Princes*; no bottom could be found, neither by the ſlineſs of a Covenant, nor the Dint of the Sword: But even for a ſetlement, All were forc'd to return, to the *forſaken Eſtabliſhment*. Which is a ſufficient Conviction, to open Eyes and Hearts unſear'd; of the Juſtneſs and neceſſity of the Office. And that *Digitus Dei*, or the Expreſs Will of Heaven is Viſible in the Caſe: For had God been offended at *Tapers*, or at all pleas'd *with Dark Lanthorns*: after ſo long a ſuſpenſion, held up by the *bloody Hand*; undoubtedly it had never been Reſtor'd.

Par. 179.

A Seaſonable Cautel to General Counſels.

THE Duty and great Honour, of publick Aſſemblies, is to lay aſide ſelf-Intereſt, and debate Affairs, Deliberately and Cooly: And when once matters are ſeriouſly Digeſted, and Reſolvedly Agreed on: *To Vote and Unvote, at the Peekingneſs of every prick-ear'd Creeper*; Is more then Fickleneſs, *the meaneſt of Puſillanimities*: A Diſgracing of Authority and moſt Inſecure; in *Expoſing Determinations of State to Mockery and Scorn.*

1. *In*

1. *In Religion.*

Liberty of Sheaking, will fet the Gate wide open, to all Helliſhneſs: once *Bit with Sedition, they become Frantick.* Every one Broaching, what Deſtructiveneſs they pleaſe: *the moſt Abſurd and Damnable, the pureſt Spirit.*

2. *In State.*

'Tis an Encouragement, to Congeal their Frenſie: when in Buſling and Baffling, they may procure Liberty; when will the Law be obſerv'd? 'tis no better, then *Stealing the Gooſe, and ſetting up the Feather:*

By the ſame Petiſhneſs, they dream the Spiritual Law hard: They may ſtand on Terms, and Camphyle with the Temporal. And by *their Trivancy, in Scrupling and non-obeying the one, the other is Maim'd and Reſiſted.*

Diverſity of Religion Deſtructive to Monarchy.

Hardly Peace in the State, without Unity in the Church: is an approved Maxim. Contrariety of Judgment, in Spiritual Matters

ters (wherein ſhould be the fulleſt Aſſent) Diſ-joynts the Affection; makes Parties and ſeveral Factions: for though Teeth outwards, they may appear ſomewhat Curteous and fair; yet inwardly, there's not that Graciouſneſs of good Will, and Debonaireneſs of Love: As when All of one Belief. Therefore a *general Liberty* not only inconſiſtent with the Purity of Religion, but even very Incongruous, and againſt the *Intereſt of State.*

Thus we contend for no light matter, with the moſt Prudential, *Salus Regis*, or the very *Being of Monarchy*, lies at Stake: And therefore the Law, not over-whetted, but too Dull and Curt.

'Tis Agreed that in Republiques, Conſiſting of *Trucking Nurture*; one Size of State: Studious only to amaſs, and hoord up Pilth; a *Liberty of Ranting*, happily not ſo Formidable; there being no Pyramids of Envy, to blaze Ambition. But for Monarchy, *the Colony of Honour, and Element of Ambition*: 'tis fear'd their Shafts, will be too Buſie; and if not Button'd, too Bold and Dangerous: Like the Heat of the two Competitours, the *one would brook no Peer, the other no Supreme.*

In brief, any little Faculty of Diſpenſation, will prove Ruinous to Monarchy.

3. *In Law.*

After the Judgment of ſeveral Acts of Parliament; 'tis againſt the Safety of the Kings Soul: And *Sedition like Murder, can hardly Conceal long; it muſt out, though to the Ruine of the Contriver.*

4. *In the Iſonomy, or even Poiſe of Juſtice.*

'Tis very Hard; that the Obedients, that readily Comply; leading a dutiful and ſober life: ſhould fare worſe, then the Surly and Undutiful: *the fearleſs Darers, that Vapour againſt Law and Reaſon; and make all the Buſtle.*

Such Partiality is enough, to Diſ-ſpirit and caſt down the moſt Valiant'ſt; into more then Heavineſs, even Deſpair: and to Entice and Embolden the Cowardous, and even harden their Haughtineſs.

The Sequel is plain enough, to the leaſt Speck of underſtanding; though bred at the Plough tail: If Surlineſs be cock'd up with Indulgings, 'twill vaunt more ragingly in Churlings: And glory to Alarum Church and State, with Continual Diſlikings: which ſhall always unſetle the one, and Diſquiet the other.

So

So that (through *remiſs Cockerings*) we ſhall never Enjoy Religion, nor indeed Peace.

5. *In Politick Prudence.*

To keep *Peace on the Hindge*, the ſureſt Contrivance, is to *cheriſh Obedience to Law*: If ſome few inconſiderable Wretches are Pleas'd, the Solider and better Part; will be Diſoblig'd: then their Diſſentings, may prove as Fearful, and more then the former; becauſe forty Times more Worthy: And *to ſlight a Friend, and not abate an Enemy, is Doting Wiſdom.*

A Friend will ſtick to the End, and therefore ought to be put in the Boſom, and made much of: for his Integrity will avail more, in Time of Need; then a Crowd of Foes, *ſeemingly Fetch'd off*, with eaſie yieldings to Ignorance and Pride: Muffling their Paſſions, from open Ravings, till opportunity invite them, to Staring Franticknes.

Thus the Gratifying one Faction, will beget a greater: and ſo *a Stone in the Foot ſtill.* The State ſicker for Changing the Law.

But *quod inconsultò Diximus, Consultò Revocamus*, what we have *Indulgently Voted, we Advisedly Repeal*: otherwise the Church (without running to a *Seer*) will certainly be Destroy'd: and the Monarchy overthrown.

Par. 179.

An Advisement to Princes, how they Dandle, the Ticqueerers against Monarchy.

'TIS held a safe Tenent of State, with the Judicious: *that nothing doth more Exalt and Amplifie Princedoms, then Sticking close to Unity in Religion.*

Liberty of Conscience: O sad Juggle! a *Sophism of Deluſion*; and impossible to be Allow'd; unless the Prince be weary of his Crown: for if Connivings, produce these Scaring Blunders, what will do a full Liberty? that will soon end the Strife, and throw Monarchy shear out of the Window.

Currat Lex.

For the smallest Indulgence Imaginable, will be the Mother of more Mischief, then hapily a *Session of Wits can Redress*:

Redreſs: Give but an Inch, and under Colour of Diſpenſation (ſuch is the Malapertneſs of *Cocker'd Schiſm*) they'le take an Ell: And deem it but ſcanting meaſure, though they skip all Bounds, of Piety and Manners: *Liberty of Roving* will give them the choice, of *Ruffus Shield*; *to repudiate Heaven, or Eſpowſe Hell.*

Vivat Eccleſia.

Otherwiſe this Audaciouſneſs will ſwell, to Confront Sovereignty: and in a ſhort Time, had they Teeth to their Stomach, Create a martial Diſturbance.

Par. 180.

Mournings for Moroſeneſs.

I'ME ſtruck to the Heart, that ſo Gallant a Prince, as the *Majeſty of England*; ſhould be thus Abus'd: That no Acts of Grace, no ſoftneſs of Temper; ſhould prove Diſſwaſives ſufficient, to ſilence the Froward: But rather Condenſate and brazen their Impiety.

——*but it hath been Told,*
Though ruſhie Anchors break, iron will Hold.

Forbearings ſignifie no more, then words written in Water.

If the Galaxy or milkey Moniſhings fail; perſevering in Eccleſiaſtical Unity, will pick ſtubborneſs out of the Breaſt: And ſpare *legal Buffetings* the Trouble, of Converting the Spirit. Since Mildneſs cannot Prevail, undoubtedly Executing the Will of Heaven in ſuppreſſing Faction, *will Kill the Serpent, and Keep the Crown on his Head.*

Par. 181.

Vive le Ley.

ELſe Religion muſt ſuffer, and in time be overturn'd: for every Hot-head that pleads ſo fiercely, for *Liberty of Conſcience*; without Begging him for an Anatomy, hath apparently a *Pope in his Belly.* Deſigning to reduce the Church, into a *deſpicable Condition*; through *Tumult and Confuſion.* And then to ſlip in the *golden Croſs*; which in Truth are the *Univerſal Deſignments, of all the Whinings and Soothings, for Freedom of Conſcience.*

Par.

Par. 182.

The Precation for the Dethroners of Monarchy.

AT the great Advent, of the *Sovereign of Souls*, and *Fusticiary of Spirits*: When the Soul must Appear in its *Albe*, or natural Shape; without Frock or Shift, and Plead peremptorily: Pray God this Sowrness against the State be not Sentenc'd to *Chains of Darkness*.

Par. 183.

The Conclusion.

1.

TO Conclude: the State having been too much Bruis'd, through so lame a Patrociny. No Satyrick Fume, or sporting Vein, through *Florridness of Stile*; to bait the poor beguiled Ramble: No swelling Thoughts, to Enlarge my Privacy; through *Romantick Pride*, to look Big in Print: Sneakingly to Creep, or Curry Favour with *Parmenio*: Hath occasioned this *Emparlance*. But meerly the *Impulse of Conscience*, out of the Allegiance I owe to the Church, to lay the *Spirit of Error*, for the safeguard of the

Soul, and the Good of Monarchy. In truth, to Confirm the Regular, and if it Stand with the *Divine Pleaſure*, to reduce the Pilgrim.

2.

Pardon the Frequency, of ſome French words; us'd out of neceſſity, becauſe *Adapted by Law*: not foiſted in, out of the Common Fondneſs; that admit of no Compleat Accompliſhment: without the Party be Dextrous, in Jabering French. I deteſt that Mimicalneſs. Deeming our own Mother Tongue; juſt as Good: if not more *Expreſſive, Elegant, and Grave.*

3.

If the Tickliſh, take ſnuff at the Jocoſeneſs; feeling himſelf thereby Galled, I wiſh it may prove, a Drench ſtrong enough; to prevent his further Retchings, againſt the Church.

I mind not the *Teleſcope of Spite*, the Squintings of Gibers, or the waywardneſs of ſome Shuttle-Cocks: nor indeed the *Pryings of the ſevereſt Cenſour*; being Conſcious of my own Candidneſs, having made no Breach of Charity or Civility: conceiving Huffings and Durtings (*Billingſgate Arguments*) will never make a

Pro-

Proſelyte: And therefore forbore all *Tartneſs of Expreſſion*; more then what the Subject matter did of neceſſity require; not a ſyllable hiſſing, at any Body in Particular; by Anagram or Circumlocution: *no Lampoon of Wantonneſs, nor Iambicks of Malice; the frequent Arguings, of the Spawlers againſt Prelacy.*

4.

Making a little Bold, with the *Maſculine Saintſhip*; perchance with the Mild, might have been ſomewhat Pardonable: If Chiming againſt the Female, had been forborn: which *with the Guilty*, ſeems untunable and Hideous.

I cannot think, ſtriking on this String; will be either *Maget or Moat*; in any Civil Eye, not *blear'd by Faction*: for I handle them, *without Levity or Gibery*; with the Julip of Bowels, (without the leaſt Cramb or nick of Reproach) to take off the fiery Depravedneſs; againſt Monarchy: Aiming to Diſabuſe, the *negative Believers*, or wandering ſide: in Reſcuing their ſouls, from the ridiculous Coſonage; of this *holy Impoſture.*

5.

The Diſcourſe in the Bulk, being purely

ly

ly Controverſal; acting no individual Perſon: only Checking, by *the Modiſhneſs of Reaſon*; and likewiſe by the Laws of Charity, Counſelling the Beguilers. I need not Imparle with the Diſcreet, to pardon my Slippings: nor ſhall I much care, to take off the Spatterer; from his *Mocking and Mewing*: By the Enchanting way of the Saints, *with Cramping the Spirit*; to flouriſh my Pen with bumbaſt Phraſes, or Perfuming it with Flattery; the *Cardinal Doctrine of Sedition.*

Neither can I ſurmiſe, that the ſowreſt or peeviſh'ſt Perſon alive, that adviſes with Civility: will be in the leaſt offended, at theſe Debates; being no more, then *a Modeſt Defence, for the King, Church, and Law of the Land*: which the Loweſt, are not only oblig'd, in Thankfulneſs for their Protection, and Enjoyment of Peace: But formally bound up by Oath; to honour and yield Obedience.

6.

If proſcrib'd by the Orthodox, I ſhall lend my Hand, to the oſtraciſm: And that the Church, might be Indempnified, reſt Pleas'd, and rejoyce in the Proſcription.

May

May the great God of order, reclaim theſe turbulent Rangers: from being any longer Gull'd, with *the flaſhy Saintings of Deluſive Clouds*: to our Sorrow, and their own Ruine.

Lord chaſe out all Flaſhineſs of opinion, all Growlingneſs of Humour: And Reſtore them to their right ſenſes to render *obedience to thy Word, and ſubmiſſion to the Law*: And they muſt be Happy, even **againſt their Wills.**

FINIS.

'TIS desired the slips of the Press might be Corrected, before the Perusal: that the sense of the Author might not be Mistaken.

Misprintings.

PAge 91, line 11. for *from Appearance*, read *his Appearance*, p. 114, l. 16, for *Nicity*, r. *Nicety*, p. 115, l. 8, for *Statude*, r. *Statute*, l. 13. for *by ome*, r. *some*, p. 117, l. 23, for *or Assigne*, r. *or make an Assignee*, p. 126, l. 13, for *by an*, r. *by any Act or Deed*, p. 138, l. 13, for *Talleg.* r. *Tallag.* p. 174, l. 12. for *Back*, r. *Bank of Reason*, p. 213, l. 12, *and Estate*, r. *and the Estate*, p. 286, l. 14. for *overture*, r. *overtness*, p. 300, l. 15, for *from* r. *for*.

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